TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1911

No. [redacted] 28

SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

FILED APRIL 3, 1909.

(21,587.)

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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

INDEX.

a SOUTHERN RAILWAY COMPANY, Plaintiff in Error,
vs.
UNITED STATES OF AMERICA, Defendant in Error.

James Weatherly, Attorney for Plaintiff in Error.

1 *Summons.*

UNITED STATES OF AMERICA:

District Court of the United States for the Northern District of Alabama, Southern Division.

The President of the United — of America to the Marshal of said District of Alabama, Greeting:

You are hereby commanded to summon the Southern Railway Company, who are citizens of the state of Virginia, to appear before the Honorable District Court aforesaid, at the place of holding said Court at Birmingham, on the first Monday of September next, to answer the complaint of the United States of America, and have you then and there this writ.

Witness, The Honorable Thomas G. Jones, Judge of said District Court, and the seal thereof, on this the 21st day of February, in the year of our Lord One Thousand Nine Hundred and Seven.

—— ——.

Issued the 21st day of February, in the year of our Lord One Thousand Nine Hundred and Seven.

Attest:

[SEAL.] CHAS. J. ALLISON,
Clerk U. S. District Court, Northern District of Alabama.

2 *Complaint.*

In the District Court of the United States for the Northern District of Alabama, — Division.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

Petition.

Now comes the United States of America, by Thomas R. Roulhac, United States Attorney for the Northern District of Alabama, and brings this action on behalf of the United States against the Southern Railway Company, a corporation organized and doing business under the laws of the State of Virginia, and having an office and

place of business at Birmingham, in the State of Alabama; this action being brought upon suggestion of the Attorney General of the United States at the request of the Interstate Commerce Commission, and upon information furnished by said Commission.

For a first cause of action, plaintiff alleges that said defendant is a common carrier engaged in interstate commerce by railroad among the several states and territories of the United States, particularly the State of Virginia, Tennessee and Alabama.

Plaintiff further alleges that in violation of the Act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896, (contained in 29 Statutes at Large, page 85), and as amended by an Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on or about February 8, 1907, hauled on its line of railroad one car, to-wit: Southern No. 70057, used in the movement of interstate traffic, to wit: coal consigned from Birmingham, in the State of Alabama, to Charleston, in the State of South Carolina.

3 Plaintiff further alleges that on or about said date, defendant hauled said car with said interstate traffic over its line of railroad from Birmingham, in the State of Alabama, in a southerly direction, within the jurisdiction of this court, when the coupling and uncoupling apparatus on the "A" end of said car was out of repair and inoperative, the chain connecting the lock pin or lock block to the uncoupling lever being broken on said end of said car, thus necessitating a man or men going between the ends of the cars to couple or uncouple them, and when said car was not equipped with couplers coupling automatically by impact, and which could be uncoupled without the necessity of a man or men going between the ends of the cars, as required by Section 2 of the Safety Appliance Act, as amended by Section 1 of the Act of March 2, 1903.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

For a second cause of action, plaintiff alleges that said defendant is a common carrier engaged in interstate commerce by railroad among the several states and territories of the United States, particularly the States of Virginia, Tennessee and Alabama.

Plaintiff further alleges that in violation of the Act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by an Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on or about February 8, 1907, hauled on its line of railroad one car, to wit: Southern No. 69319; (said car being one regularly used in the movement of interstate traffic and at the time of said violation being loaded with coal consigned from Birmingham, Alabama, to Selma, Alabama.

Plaintiff further alleges that said line of railroad over which said car was hauled on said date is a part of a through highway

4 over which Interstate traffic is being continually hauled from one state in the United States to another state in the United States.)

Plaintiff further alleges that on or about said date, defendant hauled said car with said traffic over its line of railroad from Birmingham, in the State of Alabama, in a southerly direction, within the jurisdiction of this court, when the coupling and uncoupling apparatus on the "B" end of said car was out of repair and inoperative, the chain connecting the lock pin or lock block to the uncoupling lever being broken on said end of said car, thus necessitating a man or men going between the ends of the cars to couple or uncouple them, and when said car was not equipped with couplers coupling automatically by impact, and which could be uncoupled without the necessity of a man or men going between the ends of the cars, as required by Section 2 of the Safety Appliance Act, as amended by Section 1 of the Act of March 2, 1903.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

For a third cause of action, plaintiff alleges that said defendant is a common carrier engaged in interstate commerce by railroad among the several states and territories of the United States, particularly the States of Virginia, Tennessee and Alabama.

Plaintiff further alleges that in violation of the Act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by an Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on or about February 8, 1907, hauled on its line of railroad one car, to wit: Southern No. 97921; said car being one regularly used in the movement of interstate traffic and at the time of said violation being loaded with coal consigned from Birmingham, Alabama, to Selma, Alabama.

Plaintiff further alleges that said line of railroad over which said car was hauled on said date is a part of a through highway over which interstate traffic is being continually hauled from one state in the United States to another state in the United States.

Plaintiff further alleges that on or about said date, defendant hauled said car with said traffic over its line of railroad from Birmingham, in the State of Alabama, in a southerly direction, within the jurisdiction of this court, when the coupling and uncoupling apparatus on the "A" end of said car was out of repair and inoperative, the handles to the uncoupling levers being broken off of said levers on said end of said car, thus necessitating a man or men going between the ends of the cars to couple or uncouple them, and when said car was not equipped with couplers coupling automatically by impact and which could be uncoupled without the necessity of a man or men going between the ends of the cars, as required by Section 2 of the Safety Appliance Act, as amended by Section 1 of the Act of March 2, 1903.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

For a fourth cause of action, plaintiff alleges that said defendant is a common carrier engaged in interstate commerce by railroad among the several states and territories of the United States, particularly the States of Virginia, Tennessee and Alabama.

Plaintiff further alleges that in violation of the Act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large,
6 page 85), and as amended by an Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on or about February 9, 1907, hauled on its line of railroad one car, to wit: D. T. & I. 8643, used in the movement of interstate traffic, to wit: lumber consigned from a point in the State of Mississippi, to Cleveland, in the State of Ohio.

Plaintiff further alleges that on or about said date, defendant hauled said car with said interstate traffic over its line of railroad from Birmingham, in the State of Alabama, in a southerly direction, within the jurisdiction of this court, when the coupling and uncoupling apparatus on the "A" end of said car was out of repair and inoperative, the chain connecting the lock pin or lock block to the uncoupling lever being broken on said end of said car, thus necessitating a man or men going between the ends of the cars to couple or uncouple them, and when said car was not equipped with couplers coupling automatically by impact, and which could be uncoupled without the necessity of a man or men going between the ends of the cars, as required by Section 2 of the Safety Appliance Act, as amended by Section 1 of the Act of March 2, 1903.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

For a fifth cause of action, plaintiff alleges that said defendant is a common carrier engaged in interstate commerce by railroad among the several states and territories of the United States particularly the States of Virginia, Tennessee and Alabama.

Plaintiff further alleges that in violation of the Act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896), contained in 29 Statutes at Large, page 85), and as amended by an Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on
7 or about February 9, 1907, hauled on its line of railroad one car, to wit: T. C. S. & D. No. 19832; said car being one regularly used in the movement of interstate traffic and at the time of said violation being loaded with coke consigned from Pratt City, Alabama, to Mobile, Alabama.

Plaintiff further alleges that said line of railroad over which said car was hauled on said date is a part of a through highway over which interstate traffic is being continually hauled from one state in the United States to another State in the United States.

Plaintiff further alleges that on or about said date, defendant hauled said car with said traffic over its line of railroad from

Birmingham, in the State of Alabama, in a southerly direction, within the jurisdiction of this court, when the coupling and uncoupling apparatus on the "A" end of said car was out of repair and inoperative, the lock block being broken on said end of said car, thus necessitating a man or men going between the ends of the cars to couple or uncouple them, and when said car was not equipped with couplers coupling automatically by impact, and which could be uncoupled without the necessity of a man or men going between the ends of the cars, as required by Section 2 of the Safety Appliance Act, as amended by Section 1 of the Act of March 2, 1903.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

Wherefore, plaintiff prays judgment against said defendant in the sum of five hundred dollars and its costs herein expended.

THOS. R. ROULHAC,
United States Attorney.

(End.:) Filed in Clerk's office Feb'y 20, 1907. Chas. J. Allison, Clerk.

8 *Demurrer.*

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

UNITED STATES OF AMERICA
vs.
SOUTHERN RAILWAY COMPANY.

Comes the defendant, the Southern Railway Company, and demurs to the petition filed in this cause as a whole, and to each and every separate part thereof purporting to state a separate cause of action from 1st to 5th inclusive, on the ground that the said Act of Congress, upon which said petition is based, and known as the Safety Appliance Act, approved March 2nd, 1893, as amended by an Act, approved April 1st, 1896, and as amended by an Act, approved March 2nd, 1903, is violative of the Constitution of the United States in the following particulars, namely:

1. That it exceeds the power granted to Congress of the United States by the Constitution thereof and especially by Subdivision 3 of Section 8 of Article 1 thereof, in that it attempts under the guise of regulating commerce among the several States, to regulate the use and operation of vehicles and other instrumentalities of railroads which are used in the carrying on of intrastate commerce.

2. Said Act is not authorized by said Sub-division 3 of Section 8 of Article 1, of the Constitution of the United States.

3. Said Act authorizes, or attempts to authorize, the imposition of a penalty upon railroad companies engaged in the interstate commerce irrespective of whether or not the cars, vehicles or other instrumentalities used by such railroad company are at the time of

the use of such car, vehicle or other instrumentality engaged exclusively in intra-state commerce.

9 4. Said Act purports to apply to a car or other instrumentality of a common carrier solely because used or engaged regularly in interstate commerce, without respect to whether or not, at the time it is actually being engaged exclusively in the movement of interstate traffic.

5. Said Act is violative of Article 10 of the Constitution of the United States.

And the defendant further demurs specially to that part of the petition setting forth a second cause of action, and separately and severally to that part of the petition setting forth a third cause of action, and separately and severally to that part of said petition seting forth a fifth cause of action, on the following ground, namely:

1. Because each of said parts of said petition shows on its face that the movement of the car in the particular case was a local movement, namely: in the second cause of action a movement of Southern Car No. 69319, loaded with coal, "consigned from Birmingham to Selma, Alabama"; in the third cause of action, Southern Car No. 97921, loaded with coal," consigned from Birmingham to Selma, Alabama," and the fifth cause of action, TCS. & D No. 19832, loaded with coke, "consigned from Pratt City, Ala., to Mobile, Alabama."

WEATHERLY & STOKELY,
Attorney- for Defendant.

Filed Sept. 26th, 1908.
CHAS. J. ALLISON, *Clerk.*

10 (District ourt, N. D. Alabama, S. D. September Twenty-fifth, 1909.)

No. 115.

UNITED STATES
v.
SOUTHERN RAILWAY COMPANY.

1st. The Acts of Congress known as the Safety Appliances Acts (Act approved March 2, 1893 and amendments thereto approved April 1, 1896 and March 2, 1903) are within the power conferred by the Constitution of the United States upon Congress and are not violative of Subdivision 3 of Section 8 of Article 1 thereof.

2nd. The Safety Appliance Acts are not violative of the Tenth Amendment to the Constitution of the United States.

3rd. Congress having determined by formative action to regulate the use of cars running upon a railroad between the states so as to provide for the use of certain safety appliances on such cars running thereon, has by said Acts taken affirmative action in regard thereto and to this extent the action by Congress is exclusive.

4th. The Reference in the Act of March 2nd, 1903 to any railroad engaged in interstate commerce" applies to the interstate highway as an instrument of commerce and congress having taken affirmative

action in reference thereto, its control of the interstate highway being thereby conslusive, the statute requiring vehicles running on the interstate highway to be provided with certain safety appliances embraces all uses of the highway, whether for the transportation of interstate traffic or of the transportation of traffic from a point within a state to another point within the same state by common carriers engaged in interstate commerce.

5th. The Principal decided in the Employers' Liability cases (207 U. S. 463) is not decisive of the issue of this case in the former case the statute under consideration was addressed to the *individuals or corporations* engaged in interstate commerce, where as in the case at bar the statutes are addressed alone to the use of an instrument of interstate commerce, viz: an interstate railroad highway.

11 6th. Congress has power, not only under the commerce clause of the Constitution, to regulate interest to commerce and the instrumentalities thereof, but also by virtue of its police power to provide for the protection of Railroad Employees and the traveling public by prescribing safeguards for vehicles, etc., used over an interstate highway or any portion thereof. Under the Safety Appliance Acts, therefore, a failure to provide vehicles, etc., with the safety appliances required by the Acts is a violation thereof when the trains, cars, etc., are operated over any portion of the highway, even though that portion be from a point within a state to another point within the same state.

7th. Railroads engaged in interstate commerce are subjects of such commerce national in their character, requiring uniformity of regulation, and the Power of Congress over the same is exclusive. This Power, like all others vested in Congress, is complete in its self, may be exercised to the utmost extent, and acknowledges no limitations other than are prescrived in the Constitution. The Sovereignty of Congress, though limited to specified objects, is plenary as to those objects; the power over commerce among the several states is vested in congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the Constitutions of the United States.

(Syllabus by the Court.)

On demurrer to Petition to recover penalties for violations of safety Appliance Acts.

O. D. Street, United States Attorney, and Roscoe F. Walter, Special Counsel, for the United States.

Weatherly & Stokely, for the Defendant.

HUNDLEY, *District Judge:*

This is an action brought by the United States against the Southern Railway Company, to recover from the Defendant railway penalties for failure to equip its cars with automatic couplers

12 and other devices required by the Acts of Congress known as the Safety Appliance Acts. The Petition is in five differ-

ent Counts or causes of Action, each count referring to a separate and distinct car which, it is averred, was not provided with the safety appliances required by the Acts of Congress. The first Count or cause of action is in words and figures as follows, to-wit:

"For a first cause of action, Plaintiff alleges that said defendant is a common carrier engaged in the interstate commerce by railroad among the several states and territories of the United States, particularly the State of Virginia, Tennessee and Alabama.

Plaintiff further alleges that in violation of the Act of Congress, known as the Safety Appliance Act, approved March 2nd, 1893 (Contained in 27 Statutes at large, page 531), as amended by and Act approved April 1st, 1896 (contained in 29 Statutes at large, page 85), and as amended by an act approved March 2nd, 1903 (contained in 32 Statutes at large page 934), said defendant, on or about February 8, 1907 hauled on its line of Railroad one car, to-wit: Southern #70057, used in the movement of interstate traffic, to-wit: Coal consigned from Birmingham, in the State of Alabama, to Charleston, in the State of South Carolina.

The Plaintiff further alleges that on or about said date, defendant hauled said car with said interstate traffice over its line of Railway from Birmingham, in the state of Alabama, in a Southerly direction, within the jurisdiction of this court, when the coupling uncoupling apparatus on the "A" end of said car was out of repair and inoperative, the chain connecting the lock pin or lock block to the uncouplin- lever being broken on said end of said car, thus necessitating a man or men going between the ends of the car to couple or uncouple them, and when said car was not equipped with couplers coupling automatically by impact, and which could be uncoupled without the necessity of a man or men going between the ends of the cars, as required by Section 2 of the Safety Appliance Act, as Amended by Section 1 of the Acts of March 2, 1903.

Plaintiff further alleges that by reason of the violation of the said Acts of Congress, as amended, defendant is liable to Plaintiff in the sum of one hundred dollars."

The Second Cause of action differ- from the first only in referring to the car hauled as follows:

"Said car being one regularly used in the movement of interstate traffic and at the time of said violation being loaded with coal consigned from Birmingham, Alabama, to Selma, Alabama.

Plaintiff further alleges that said line of Railroad over which said car was hauled on said date is a part of a through highway over which interstate traffic is being continually hauled from one state in the United States to another state in the United States.

13 The Third and Fifth cause- of action are identical with the second cause of action with the exception of averring the breach of the requirements of the statute being on a different car, and the fourth cause of action is identical with the first cause with this same exception.

To the various counts or causes of action stated in the petition the defendant railway company filed the following demurrer:

"Comes the defendant, the Southern Railway Company, and demurrs to the petition filed in this cause as a whole, and to each

and every separate part thereof purporting to state a separate cause of action from 1st, to 5th, inclusive, on the ground that the said Act of Congress, upon which said petition is based, and known as the Safety Appliance Act, approved March 2nd, 1893, as amended by an Act approved April 1st, 1896, and as amended by an act, approved March 2nd, 1903, is violative of the constitution of the United States in the following particulars, namely:

1st. That it exceeds the power granted to Congress of the United States by the Constitution thereof and especially by subdivision 3 of Section 8 of Article 1 thereof, in that it attempts under the guise of regulating commerce among the several Statutes, to regulate the use and operation of vehicles and other instrumentalities of Railroads which are used in the carrying on of intra-state commerce.

2nd. Said act is not authorized by said sub-division 3 of Section 3 of Section 8 of Article one (1), of the Constitution of the United States.

3rd. Said Act authorizes, or attempts to authorize, the imposition of a penalty upon Railroad Companies engaged in interstate commerce irrespective of whether or not the cars, vehicles or other instrumentalities used by such railroad company, is at the time of the use of such car, vehicle or other instrumentalities engaged exclusively in intra state commerce.

4th. Said Act purports to apply to a car or other instrumentality of a common carrier solely because used or engaged regularly in interstate commerce, without respect to whether or not at the time it is actually being engaged exclusively in the movement of interstate traffic.

5th. Said Act is violative of article 10 of the Constitution of the United States.

And the defendant further demurrs specially to that part of the petition setting forth a second cause of action, and separately and severally to that part of the petition setting forth a third cause of action, and separately and severally to that part of said petition setting forth a fifth cause of action, on the following ground, namely 1st.

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Because each of said parts of said petition shown on its face that the movement of the car in the particular case was a local movement, namely: in the second cause of action a movement of Southern car No. 69319, loaded with coal, 'consigned from Birmingham to Selma, Alabama, in the third cause of action, Southern Car No. 97921 loaded with coal' consigned from Birmingham to Selma, Alabama, and the fifth cause of action, T. C. S. & D. No. 19832, loaded with coke, consigned from Pratt City, Alabama, to Mobile, Alabama."

Three questions are thus presented for the decision of the court by this demurrer. The first is, is the Act of Congress approved March 2nd, 1893, with the amendments thereto, and commonly known as the safety Appliance Act a valid exercise by Congress of the power delegated to it under the commerce clause of the constitution of the United States. The Second is, has Congress in the Acts referred to so assumed those powers reserved to the states as

to render the Acts abhorrent to the tenth amendment to the Constitution. The Third question is, if they are a valid exercise of the right conferred upon congress by the constitution, is a proper cause of action, stated under the second count in the petition and the other counts similar thereto.

It is argued by counsel for the Defendant with great earnestness, that the language employed in the Act approved March 2nd, 1903, defining and declaring that the provisions and requirements of the original safety appliance Act "shall be held to apply to all trains, locomotives, tenders, cars and similar vehicles used on any railroad engaged in interstate commerce," renders the acts invalid because they are thus made to apply with equal force to trains, locomotives, etc., engaged entirely within the states and with relation to interstate commerce alone. In this connection it is also argued, that the decision of the supreme Court of the United States in the cause known as the Employers' Liability Cases, 207 U. S. 463, is dexisive of the first question presented, and this Court is directed
15 especially to the dissenting opinion of Mr. Justice Moody, in which he uses the following language in referring to the Employers' Liability Act.

"If the statute now before us is beyond the constitutional power of congress, surely the Safety Appliance Act is also void, for there can be no distinction in principle between them. While a dissenting opinion is never binding upon the Courts as a decisive statement of the law yet the statement herein quoted, coming as it does from so high a source, is entitled to very great weight and influence in guiding the Court to determine the issues here involved. If the learned justice is right in his conclusions, that there can be no distinction in principle between the employers' liability Act and the Safety Appliance Acts, it follows as a matter of course that the decision of the Supreme Court of the United States in relation to the former Act would apply with equal force to the Latter Acts, and I would deem it my duty to follow that Court and declare the Acts in question unconstitutional and void. The distinction between the principal decided in the employers' Liability Cases and the Safety Appliance was not drawn in question when the former cases were pending before the supreme Court of the United States, and I feel constrained to believe that the statement above quoted from Mr. Justice Moody was for that reason unadvisably made, for the distinction between the two acts, with due respect to the learned Justice in my humble judgment very marked. The conclusion arrived at by the majority of the Court in its opinion in the Employers' Liability Cases was based upon the fact, shown both in the title and the body of the statute, that it dealt with all the concerns of individuals and corporations and did not confine itself to the *interstate* commerce business which might have been done by such persons or corporations. In fine, that interstate subjects were, with equal force and effect embraced within the terms of the Act. Says the Supreme Court in that case after discussing the terms of the statute:

16 "From this it follows that the statute deals with all the concerns of the individuals or corporations to which it relates

if they engage as common carriers in trade or commerce between the states, etc., and does not confine itself to the interstate commerce business which may be done by such persons. Stated in another form, the statute is addressed to the individuals or corporations who are engaged in interstate commerce, and is confined solely to relating the interstate business which such persons may do, that is, it regulates the persons because they engage in interstate commerce, and does not alone regulate the business of interstate commerce."

The very title of the Employers' Liability Act shows that it was the intention of Congress to apply the terms of the Act to "Common Carriers" engaged in interstate commerce and not to the "business" of such commerce. Again, says the Supreme Court in the Employers' Liability Cases, supra:

"The Act, then, being addressed to all common carriers engaged in interstate commerce, and imposing a liability upon them in favor of any of their employees, without qualification or restriction as to the business in which the carriers or their employees may be engaged at the time of the injury, of necessity includes subjects wholly outside the power of Congress to regulate commerce."

When we come to consider the Safety Appliance Act, both in the title and the body of the Act together with the application made by the amendment, the distinction which is decisive of the question here raised becomes apparent. In the outset it is seen that the title of the Act shows that the purpose of the Legislation is "to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in the interstate commerce to equip their cars with certain appliances for the safety of the employees and the traveling public." When the First Safety Appliance Act was enacted by Congress, which was the Act of March 2, 1893, the penalties under the Act were confined to any Railroad Company which uses "any car in *interstate commerce*" that is not provided with appliances referred to in the Act. Surely there is no kind of construction which would hold that this reference could mean any car in *interstate* commerce. By the terms of the Act approved March 2, 1903, the application of the original Act was enlarged so as to make it apply "to all trains, locomotives, tenders, cars and similar vehicles used on any Railroad engaged in interstate commerce "..... and all other locomotives, tenders, cars and similar vehicles used in connection therewith." It is this language, it is claimed, which brings this statute within the principle decided in the Employers' Liability Cases By the terms of the Act the distinction will be noted, that, while the Employers' Liability Act Applies to "*individuals and corporations*" the Safety Appliance Act, as amended applies to the *instrumentalities* engaged in the interstate commerce and the use of those instrumentalities" on any railroad engaged in interstate commerce." Here reference is made to the *National, interstate highway* alone, used in interstate commerce, and by no system of reasoning can this reference be properly held to apply to an *intrastate highway*. As it is said by the Supreme Court in the Employers' Liability Cases, Supra, (referring to the Employers' Liability Act) "the statute is addressed to the individuals or corporations;" while it is

clear that in the case at bar the statute is addressed to the *instrumentality* of commerce, viz: the railroad, *interstate highway*. So that the question at issue before the Court resolves itself simply into the proposition, Has Congress the right to regulate the interstate highway, and the use of vehicles thereon? has it authority to provide for the safety of employees and travelers while using the interstate highway? If Congress has the right to so regulate this interstate highway, does the inhibition of the statute apply to the use thereof for purposes of transportation of commerce between points entirely within a state? Has Congress a right also under its police authority to say that this highway shall be safe and unobstructed.

17

I take it that it is -necessary for me at this late date in the history of our country to cite Authorities in support of the proposition that the transportation of persons and property in commerce. In other words, that the business of carriers in commerce, and then this business is foreign or interstate it has been frequently decided that the power to legislate for its direct control is lodged within the power of congress and this power is paramount. It was decided in the Debs Case, 158 U. S. 568, that the obstruction of such commerce was unlawful under the laws of the United States, could be suppressed by the armies of the United States, and, at the instance of the United States, could be joined in its Courts. Speaking of the power of congress to regulate commerce Mr. Chief Justice Marshall, in the great case of Gibbons v. Ogden, 9 Wheat., on page 196, says:

"It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, and may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution."

Nor has this power of Congress to regulate commerce been *laid* to apply only to persons or corporations engaged in that commerce, but it has been held to apply to every instrumentality of commerce. Says Mr. Justice Johnson in his concurring opinion in Gibbons v. Ogden, 9 Wheat., on page 229:

"Commerce, in its simpliest signification, means an exchange of goods; but, in the advancement of society, labor, transportation, intelligence, care, an- various mediums of exchange, becomes commodities, and enter into commerce; the subject, the vehicle, the agent, and their various operations, become the objects of commercial regulations."

18

In Cooley v. Port Wardens, 12 How. 299, the Court, in holding that the regulation of pilots is regulation of commerce within the meaning of the commerce clause, says:

"It extends to the persons who conduct it as well as to the instruments used.

Mr. Justice Field, in Sherlock v. Alling, 93 U. S. 99, delivering the opinion of the Court, says:

"It is true that the commercial power conferred by the constitution is one without limitation. It authorizes legislation with respect to all subjects of foreign interstate commerce, the persons engaged in it, and the instruments by which it is carried on."

Mr. Justice Field, in the case of the Gloucester Ferry Company v. Pennsylvania, 114 U. S., on page 203, in delivering the unanimous opinion of the Supreme Court, says:

"The means of transportation of persons and freight between the states does not change the character of the business as one of commerce, nor does the time within which the distance between the states may be traversed. Commerce between the states consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, and the navigation of public waters for that purpose, as well as to the purchase, sale and exchange of commodities. The power to regulate that commerce, as well as commerce with foreign nations, vested in Congress, is the power to prescribe the rule by which it shall be governed, that is, the condition upon which it shall be conducted; to determine when free and when subject to duties and other exactions. The power also embraces within its control all instrumentalities by which that commerce may be carried on, and the means by which it may be aided and encouraged."

Again, says Mr. Justice Harlan, in affirming the decree of the lower court in the case of the Northern Securities Company v. United States, 193 U. S. 350

"Whilst every instrumentality of domestic commerce is subject to state control, every instrumentality of interstate commerce may be reached and controlled by national authority, so far as to compel it to respect the rules for such commerce lawfully established by Congress."

From the decisions to which I have just referred, it is plain that it has been decided in no uncertain terms that Congress has a right not only to regulate individuals or corporations engaged in interstate commerce, but the instrumentalities of such commerce as well.

This being settled by the Courts, thus it follows that the in-
19 strumentaliti- are as much a part of the commerce as the business thereof, and that the power of congress to regulate the one is as full and complete as its powers to regulate the other. The engine engaged in interstate commerce is an instrumentality of that commerce and may be regulated by congress. The cars, and the rails upon which the cars are run, are all instrumentalities of commerce. The highway upon which the cross ties and the rails rest, when this highway with its cross ties and rails runs from one state to another, is an instrumentality of commerce falling within the purview of the Constitution which confers upon Congress the right to regulate interstate commerce. From what has been said above and the authority cited it is plain, therefore, that Congress, in regulating those instrumentalities of commerce, to-wit: "trains, locomotives, tenders, cars and similar vehicles used on any railroad engaged in interstate commerce," was acting entirely within the scope of its authority conferred by the Constitution; and the first four grounds of the demurrer are, therefore, not well taken.

I now come to the fifth ground of the demurrer, to-wit: that the Acts of Congree- in question are violative of the tenth amendment to the Constitution of the United States, which amendment is as follows:

"The powers not deligated to the United States by the Constitu-

tion, nor prohibited by it to the states, are reserved to the state- respectively, or to the people."

The argument in support of this ground of demurrer is that the attempt of Congress to regulate the interstate highway in the manner set forth in the safety Appliance Acts is an unconstitutional assumption by Congress of those powers which are reserved to the various states of the Union or to the people; that, in as much as any proper construction of those Acts must, of necessity, include the use of the highway for the purpose of carrying on commerce between two points entirely within a state, this is an encroachment upon the reserved powers of the states to regulate their internal affairs and was not conferred upon Congress by Constitution. This ques-
20 tion has been, and I presume always will remain, a question of great importance, and it has received the thought and consideration of Jurists and scholars since the foundation of our government. I shall not attempt to review the many arguments and judicial decisions which have been referred to this great question, but shall content myself by stating succinctly my reason for reaching my conclusion upon this ground of the demurrer. This conclusion is based upon what I conceive to be the fundamental policy of this government as determined not alone by its legislation, but by the decision of the Supreme Court. To determine the question whether the particular power which is here challenged has been reserved to the state or granted to the general government by the people in their constitution, depends upon a fair construction of the Constitution as a whole, including the amendments.

The United States is a Nation and its constitution is the organic, fundamental law of that nation. The people of this nation ex*h*isted as a people prior to the adoption of the Constitution and hence, *in primis*, these people were not called into being as a consequence of that instrumental one. The people collectively ex*h*isted as a political unit. Prior to the adoption of the Constitution *of* the states did not ex*h*ist as separate states, regarding themselves simply as distinct organized governments. The people of those states prior to the adoption of the Constitution were not separate, independent, sovereign aggregates or communities. They did not assemble in the convention which framed the Constitution as representatives of independent nations or sovereignties. The Constitution, therefore, was the work of the people of the United States as a whole. It is true that they did not vote together as a solid mass of electors, but they were acting in their respective commonwealths for reasons of policy and convenience. As a necessary consequence of this view the powers of the General Government can not be said to have been delegated to it by the several states in the light of organized government, nor by the people of these several states, regarding these people as seperate and independent sovereign aggregates or com*mitties*. The powers held by the general government were, therefore, necessarily delegated to it by the People of the United States
21 as a whole, abstracted from their local relations to the various commonwealths of which they were also members. Now let us carefully note the reading of the amendment under discussion

and determine, if we can, by whom were the powers not delegated by the People of the United States to the General Government reserved. Were they reserved by the several states to themselves? Surely their construction can not be correct, for if these states were not independent nations or sovereignties before the Constitution was adopted, they could not grant any powers and hence they could not reserve any. As is said by Pomeroy in his work on Constitutional law, speaking of the powers granted to the general government, as well as those reserved to the states:

"The powers not thus granted by the people of the United States to its general government were not reserved by the several states to themselves; for, as these states as such did not grant any powers, they could not reserve any. But they were reserved by the people of the United States, to themselves, or to the several states. Thus the people of the United States, as a nation, is the ultimate source of all power, both that conferred upon the general government, that conferred upon each state as a seperate political society, and that retained by themselves."

The same reservation as is here under discussion was contained in the second article of the articles of Confederation, except that the word "Expressly" was there placed before the word "Delegated." The omission of this word in the Tenth Amendment is most significant and shows the object was not to interfere with or restrict any of the powers delegated to the United States by the Constitution, whether expressly delegated or not. Metropolitan National Bank v. Van Dyck, 27 N. Y. 416 I do not pretend to say that the construction placed upon the constitution and the national character of the Government of the United States here suggested has been at all times the fixed rule of construction in relation thereto by the Supreme Court of the United States and other Courts of this Country to such an extent that it may be deemed the settled rule of construction; but what I mean to say is, that from this theory of the National character of our government and of the source of the powers granted to Congress under the constitution, have
22 been evolved those various decisions of the Supreme Court of the United States and the other Courts which have held that Congress has the power to go beyond the general regulations of commerce which it is accustomed to establish, to descend to the most minute directions if it shall be deemed advisable, and to what ever extent ground shall be covered by those directions the exercise of the state power is precluded. As said by Judge Cooley in his work on Constitutional Limitations, 7th edition, on page 856:

"Congress may establish police regulations, as well as the state; confining their operations to the subject over which it is given control by the Constitution."

It must not be understood that I am contending that Congress has the supreme power under the Constitution, or as a police regulation, to regulate the internal affairs of the states, or that the states can not under their police powers enact laws for the orderly administration of state matters, and which may incidentally affect interstate commerce. The Comprehensive statement of Mr. Chief Justice Mar-

shall, in Gibbons v. Ogden, 9 Wheat., Page 194, has always been accepted by the Supreme Court as the proper stat-ment of what matters of state control are not embraced in the grant of authority to congress to regulate commerce. In that case it is said:

"It is not inte-ded to say that these words comprehend that commerce, which is completely internal, which is carried on between man and man in a state, or between the different parts of the same state, and which does not extend to or affect other States. Such a power would be inconvenient and is certainly unnecessary. Comprehensive as the word 'among' is, it may very properly be restricted to that commerce which concerns more states than one. * * * The genius and character of the whole government seems to be, that its action is to be applied to all the external concerns of the Nation, and to those internal concerns that effect the state generally; but not to those which are completely within a particular state, which do not effect other states, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the Government."

The great, interstate, railroad highways of this country in a large number of cases have been made possible of success only by the expenditure of Millions of dollars contributed by all of the people from the National treasury. Thousand- of miles of these great highways are located and built upon the public domain, generally granted by the sovereign people through their representatives in Congress for the benefit and use of the commerce between the states. That strictly national and exclusive governmental function, of carrying the mails is exercised by means of these great highways. It will thus be seen, that by the very nature of things railroads between states are national in their character, and when Congress determines to assume regulation thereof, its control must be, and is, exclusive and final. If Congress therefore, under the power granted by the constitution and under its police power has a right to regulate the use of the interstate highway, surely that right can not be impaired by any action of a state in conflict with the rules and regulations established by Congress. Uniformity of regulation affecting all the states is not only permissible but is required. There must be only one system of rules appliable alike to the whole country, which Congress alone can prescribe. Kimball v. Mobile, 102 U. S. 691. Interminable discord must of necessity prevail under our dual state of government if the power of Congress once assumed, and the regulations prescribed by it, can be invaded by each and every state through which the great interstate highway runs. Within the field of Congressional power, authorized by the Constitution of the United States, the federal power to be effective — all must be supreme in all parts of the United States. This declaration of supremacy is vouchsafed to the Federal Government is expressed in Article Six, paragraph 2, of the Constitution of the United States, in the following words:

23

"This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the su-

preme law of the land, and the judges in each state shall be the counsel thereby, anything in the Constitution or laws of any state to the Contrary notwithstanding."

What is the meaning of this declaration? They are surely not the idle and thoughtless words of a thoughtless people, but they are the deliberate sentiments of a sovereign people, who were building a temple within which their liberties were to be enshrined for all time. It means that so far as the people of the United States, the Nation have seen fit to delegate a portion of their own
24 inherent powers of legislation and government of their appointed rulers, just so far those appointed rulers are supreme throughout the land in the exercise of those delegated powers. As is well stated by Mr. Chief Justice Waite in the case of Pensacola Telegraph Company v. Western Union Telegraph Company, 96 U. S. 1.

"The Constitution of the United States and the laws made in pursuance thereof are the supreme law of the land. Art. 6, Par. 2. A law of Congress made in pursuance of the Constitution suspends or overrides all State *Stations* with which it is in conflict."

Congress has chosen to act, and its action necessarily precludes the action of the state. Pennsylvania v. Wheeling etc. Company, 18 How. 431.

From what has been stated above and the authorities cited, it is plain that the demurrer to these counts, which aver that the cars were loaded with commodities consigned from a point within the state to another point within this same state, *are* not well taken. They were hauled over a portion of an interstate highway and by a common carrier engaged in interstate commerce. Congress has said that no vehicles shall be used on this interstate highway, which are in the condition alleged in the petition. Whether this interstate highway is used, in the hauling *of* vehicles in the condition alleged in the petition, from a point in one state to a point in another state or between points entirely within the same state is immaterial in the application of the Safety Appliance Statutes.

The demurrer, and each and every ground thereof, is overruled.

It is so ordered.

Filed September 25th, 1908.

CHAS. J. ALLISON, *Clerk.*

25 *Journal Entries.*

SATURDAY, *September the 26th,* 1908.

The District Court of the United States in and for the Southern Division of the Northern District of Alabama, met pursuant to adjournment, present Hon. Oscar R. Hundley, United States District — of Alabama, presiding; Hon. Oliver D. Street, United States Attorney, P. M. Long, United States Marshal and Chas. J. Allison, Clerk.

THE UNITED STATES
vs.
SOUTHERN RAILWAY COMPANY.

Come the parties, by attorneys, and the demurrers of the defendant to the Complaint filed in this cause having been duly argued and submitted, and the consideration thereof had by the Court;

It is now adjudged by the Court that said complaint and each and every count thereof is good and sufficient in law; and further that said demurrers are not well taken and the said demurrers and each and every ground thereof, are severally and collectively overruled and denied.

Thereupon the demurrers to the Complaint filed herein having been overruled and denied, comes now the defendant by attorney and by leave of the Court and without waiving the demurrers to each cause of action in said complaint, but insisting upon the same, files its plea separately and severally to each cause of action in said complaint.

26 *Plea.*

In the District Court of the United States for the Southern Division of the Northern District of Alabama.

THE UNITED STATES OF AMERICA
vs.
SOUTHERN RAILWAY COMPANY.

Now comes the defendant, Southern Railway Company, and after the ruling of the Court upon the demurrer to each of the causes of action set out in the complaint filed in said cause, by leave of the Court, and under the orders of the Court, and without waiving the demurrer to each cause of action in said complaint, but insisting upon the same, files its plea, separately and severally to each cause of action in said complaint, and for plea thereto separately and severally says:

That it is not guilty of the matters and things alleged in each cause of action set out in said complaint, and denies separately and severally each and every allegation therein contained.

WEATHERLY & STOKELY,
Attorneys for Defendant.

(End.:) Filed in open court Sept. 26, 1908. Chas. J. Allison, Clerk.

27 THE UNITED STATES
vs.
SOUTHERN RAILWAY COMPANY.

This cause now coming on to be heard come the parties by attorneys, also to try the issues joined comes a jury of good and lawful

men to-wit: A. N. Harris and eleven others duly impanelled tried and sworn herein a true verdict to render, who under the direction and charge of the Court, and without leaving their seats return their verdict in favor of the plaintiff and on their oaths do say: "We the jury find for the plaintiff and assess the damages at Five Hundred Dollars, A. N. Harris, Foreman."

Thereupon, it is considered, ordered and adjudged by the Court that the United States the plaintiff herein have and recover of and from the Southern Railway Company, a corporation, the defendant herein the sum of Five Hundred Dollars, besides the costs in this behalf expended, for which judgment and costs and execution is awarded.

28 In the United States District Court for the Northern District of Alabama, Southern Division.

At Law.

SOUTHERN RAILWAY COMPANY, Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error.

Petition for Writ of Error.

And now comes the Southern Railway Company, defendant herein and says:

That on or about the 26th day of September, 1908 the District Court entered a judgment herein in favor of the plaintiff and against this defendant, in which judgment and the proceedings had prior thereto in this cause, certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, this defendant prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

JAMES WEATHERLY,
Attorney for Defendant.

Filed Feb. 26, 1909.
CHAS. J. ALLISON, *Clerk.*

29 In the United States District Court for the Northern District of Alabama, Southern Division.

SOUTHERN RAILWAY COMPANY, Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error.

Assignment of Errors.

The plaintiff in error, in connection with *his* petition for a writ of error, makes the following assignments of error, which it avers occurred upon the trial of the cause, to wit:

1. The court erred in overruling the demurrer of plaintiff in error to the petition of the defendant in error in said cause.

2. The court erred in overruling the demurrer of the plaintiff in error to that section or part of the petition stating a first cause of action.

3. The court erred in overruling the demurrer of the plaintiff in error to that section or part of the petition stating a second cause of action.

4. The court erred in overruling the demurrer of the plaintiff in error to that section or part of the petition stating a third cause of action.

5. The court erred in overruling the demurrer of the plaintiff in error to that section or part of the petition stating a fourth cause of action.

6. The court erred in overruling the demurrer of the plaintiff in error to that section of part of the petition stating a fifth cause of action.

7. The court separately and severally erred in overruling each of the demurrers of the plaintiff in error to the several parts or causes of action set forth in the petition of the defendant in error.

Wherefore the plaintiff in error prays that the judgment of the said District Court be reversed.

JAMES WEATHERLY,
Attorneys for Pl'ff in Error.

Filed Feb. 26, 1909.
CHAS. J. ALLISON, *Clerk.*

30 In the United States District Court for the Northern District of Alabama, Southern Division.

At Law.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
SOUTHERN RAILWAY COMPANY, Defendant.

This 26th day of February, 1909, comes the defendant by its attorney and files herein and presents to the court its petition pray-

ing for the allowance of a writ of error, and an assignment of errors intended to be urged by it, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof the court does allow the writ of error upon the defendant giving bond according to law in the sum of Seven hundred & fifty Dollars, which shall operate as a supersedeas bond.

THOS. G. JONES,
U. S. Judge, Northern & Middle Districts of Ala.

Filed Feb. 26, 1909.
CHAS. J. ALLISON, *Clerk.*

31 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Judges of the District Court of the United States for the Northern District of Alabama, Southern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between The United States of America, plaintiff, and the Southern Railway Company, defendant, a manifest error hath happened, to the great damage of the said Southern Railway Company, as by its complaint appears.

We being willing that error, if any hath been, shall be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the City of Washington on the — day of March, next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of February, in the year of our Lord One thousand nine hundred and nine.

CHAS. J. ALLISON,
Clerk of the United States District Court
for the Northern District of Alabama,
Southern Division.

Allowed by
THOS. G. JONES,
U. S. Judge.

32 UNITED STATES OF AMERICA:

The President of the United States to The United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the City of Washington on the 26 day of March next.

Pursuant to a writ of error, filed in the Clerk's Office of the District Court of the United States for the Southern Division of the Northern District of Alabama, wherein the Southern Railway Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the *the* judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States this 26th day of February, in the year of our Lord one thousand nine hundred and nine.

THOS. G. JONES,
U. S. Dist. Judge, Northern & Middle Districts.

33 [Endorsed:] Citation. I hereby accept service of the within citation & waive further notice thereof. This February 26th 1909. O. D. Street, U. S. District Attorney.

34 UNITED STATES OF AMERICA:

The President of the United States to The United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the City of Washington on the 26 day of March next.

Pursuant to a writ of error, filed in the Clerk's Office of the District Court of the United States for the Southern Division of the Northern District of Alabama, wherein the Southern Railway Company is plaintiff in error, and you — defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States this 26th day of February, in the year of our Lord one thousand nine hundred and nine.

THOS. G. JONES,
U. S. District Judge, Northern and Middle Districts of Alabama.

35 UNITED STATES OF AMERICA,
Northern District of Alabama,
Southern Division:

I, Charles J. Allison, Clerk of the District Court of the United States of America in and for said Division of said District, do hereby certify that the foregoing is a true, full, and complete copy of the record, assignment of error- opinion and all the proceedings in the case of The United States of America, against The Southern Railway Company, as fully as the same does appear of record in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court, at office in the city of Birmingham, in said District, this Twenty-third day of March, 1909.

[Seal District Court U. S., N. D. of Ala., Sou. Div.]

CHAS. J. ALLISON,
Clerk of the U. S. District Court.

Endorsed on cover: File No. 21,587. N. Alabama D. C. U. S. Term No. 410. Southern Railway Company, plaintiff in error, vs. The United States. Filed April 5th, 1909. File No. 21,587.

In the Supreme Court of the United States.

OCTOBER TERM, 1910.

SOUTHERN RAILWAY COMPANY, PLAINTIFF in error,
v.
THE UNITED STATES.

No. 187.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This action was brought by the United States against the defendant company to recover penalties for violations of the safety appliance acts.

The petition contains five counts, each setting up a separate cause of action. The several counts are alike in the following respects: Each alleges that the defendant is "a common carrier engaged in interstate commerce by railroad among the several States and Territories of the United States, particularly the States of Virginia, Tennessee, and Alabama;" each alleges a violation of the safety appliance act of March 2, 1893, as amended by the act of April 1,

1896, and as further amended by the act of March 2, 1903; and in each the violation alleged consisted in hauling a car with a defective coupler.

As to the other allegations, the counts may be divided into two groups, the first group consisting of the first and fourth counts, and the second group of the second, third, and fifth counts.

The first count alleges the hauling, on February 8, 1907, of "Southern (car) No. 70057, *used in the movement of interstate traffic*, to wit, coal consigned from Birmingham, in the State of Alabama, to Charleston, S. C.;" and the fourth count alleges the hauling, on a different date, of another car "used in the movement of interstate commerce, to wit, lumber consigned from a point in the State of Mississippi, to Cleveland, in the State of Ohio."

The second count alleges the hauling, on or about February 8, 1907, "on its line of railroad one car, to wit, Southern No. 69319; *said car being one regularly used in the movement of interstate traffic*, and at the time of said violation being loaded with coal consigned from Birmingham, Ala., to Selma, Ala.;" and "*that said line of railroad over which said car was hauled on said date is a part of a through highway over which interstate traffic is being continually hauled from one State in the United States to another State in the United States.*"

The third and fifth counts contain precisely the same allegations as the second, except the cars alleged to have been hauled are different, and in the

fifth count the violation is alleged to have occurred on February 9, 1907. (Rec., pp. 1–5.)

Plaintiff in error demurred to the entire petition, stating five grounds, the first four of which are in substance that the safety-appliance act of March 2, 1893, as amended by the subsequent acts, is unconstitutional, because it exceeds the power vested in the United States by clause 3, section 8, article 1 of the Constitution, in that, first, it attempts to authorize the imposition of a penalty upon railroad companies engaged in interstate commerce, irrespective of whether or not the cars, vehicles, or other instrumentalities used by such railroad companies are at the time of their use engaged exclusively in intrastate commerce; and, second, it purports to apply to a car or other instrumentality of a common carrier solely because used or engaged regularly in interstate commerce, without respect to whether or not, at the time used, it is actually being engaged exclusively in the movement of intrastate traffic, and the fifth ground of demurrer was that the said act is violative of the tenth amendment, which provides that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Plaintiff in error demurred especially to the second, third, and fifth counts, on the ground that the petition showed that the movements of the cars therein mentioned were entirely within the State. (Rec., pp. 5, 6.) The demurrer was overruled in every particular. (Rec., p. 18.)

A general plea was then filed and a trial had, which resulted in a verdict against the company on each count, and upon this verdict judgment was entered, and because of the constitutional question the case was brought by writ of error directly to this court. (Rec., pp. 18, 19.)

STATUTES INVOLVED.

The act of March 2, 1893 (ch. 196, 27 Stat., 531), is entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving wheel brakes, and for other purposes;" and the second section of this act provides that after a specified date—

> it shall be unlawful for any such common carrier (any common carrier engaged in interstate commerce by railroad, as declared in the first section) to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers, coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.

The sixth section made the common carrier liable to the United States in a penalty of $100 for each violation of any provision of the act, prescribed the duties of the district attorneys and Interstate Commerce Commission with reference to its enforcement,

and in a proviso declared that the act should not "apply to trains composed of four-wheeled cars or to locomotives used in hauling such trains."

The act of April 1, 1906 (ch. 87, 29 Stat., 85), only amended the proviso in the sixth section of the previous act so as to except trains composed of eight-wheel logging cars of a certain height, and locomotives drawing the same, when such trains are exclusively used in transporting logs.

The act of March 2, 1903 (ch. 976, 32 Stat., 943), the validity of which is especially drawn in question, is entitled "An act to amend an act entitled (reciting title and date of the safety appliance act of March 2, 1893)," and it reads in full as follows:

> That the provisions and requirements of the act entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes, and their locomotives with driving-wheel brakes, and for other purposes," approved March second, eighteen hundred and ninety-three, and amended April first, eighteen hundred and ninety-six, shall be held to apply to common carriers by railroads in the Territories and the District of Columbia and shall apply in all cases, whether or not the couplers brought together are of the same kind, make, or type; and the provisions and requirements hereof and of said acts relating to train brakes, automatic couplers, grab irons, and the height of

drawbars shall be held to apply to all trains, locomotives, tenders, cars, and similar vehicles used on any railroad engaged in interstate commerce, and in the Territories and the District of Columbia, and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith, excepting those trains, cars, and locomotives exempted by the provisions of section six of said act of March second, eighteen hundred and ninety-three, as amended by the act of April first, eighteen hundred and ninety-six, or which are used upon street railways.

SEC. 2. That whenever, as provided in said act, any train is operated with power or train brakes, not less than fifty per centum of the cars in such train shall have their brakes used and operated by the engineer of the locomotive drawing such train, and all power-braked cars in such train which are associated together with said fifty per centum shall have their brakes so used and operated; and to more fully carry into effect the objects of said act, the Interstate Commerce Commission may, from time to time, after full hearing, increase the minimum percentage of cars in any train required to be operated with power or train brakes which must have their brakes used and operated as aforesaid, and failure to comply with any such requirement of the said Interstate Commerce Commission shall be subject to the like penalty as failure to comply with any requirement of this section.

SEC. 3. That the provisions of this act shall not take effect until September first, nineteen

> hundred and three. Nothing in this act shall be held or construed to relieve any common carrier, the Interstate Commerce Commission, or any United States district attorney from any of the provisions, powers, duties, liabilities, or requirements of said act of March second, eighteen hundred and ninety-three, as amended by the act of April first, eighteen hundred and ninety-six; and all of the provisions, powers, duties, requirements, and liabilities of said act of March second, eighteen hundred and ninety-three, as amended by the act of April first, eighteen hundred and ninety-six, shall, except as specifically amended by this act, apply to this act.

It will be observed that this act did not repeal to any extent the provisions of the former, its object being to make the safety-appliance laws more stringent by making clear certain provisions of the previous act about which there was doubt, and by adding requirements which were not embraced in the former act.

The construction of those provisions of the acts upon which the causes of action set forth in the petition are based will be hereinafter considered.

BRIEF AND ARGUMENT.

I.

The court properly overruled the demurrer as to the first and fourth counts of the petition.

As above stated, each of these counts alleges that plaintiff in error was "a common carrier engaged in interstate commerce by railroad," and that the car having the defective coupler was, when hauled, being "used in interstate traffic," stating with what it was laden and where the journey began in one State and the point of destination in another. Consequently, these counts fall precisely within the provisions of the second section of the act of March 2, 1893; and the constitutionality of that act is so well settled that the question needs no discussion.

Johnson v. *Railroad* (196 U. S., 1) and *Schlemmer* v. *Railroad* (205 U. S., 1) were cases based upon this act, which had been decided in the courts below favorably to the railroad companies, and were reversed by this court because the provisions of the act had been improperly construed. Its constitutionality was also recognized in the *Employer's Liability cases* (207 U. S., 496, 529) in both the opinion of the court, which was delivered by Mr. Justice (now Mr. Chief Justice) White, and also in the dissenting opinion delivered by Mr. Justice Moody in discussing a question upon which the whole court agreed. And its validity was again recognized in the opinion of the court delivered by Mr. Justice Harlan in *Adair* v. *United States* (208 U. S., 177).

The constitutionality of this act will not, therefore, now be particularly discussed. However, the authorities hereinafter cited, and reasons assigned, in support of the constitutionality of the act of March 2, 1903, have a direct bearing upon the validity of this act.

II.

The court did not err in overruling the demurrer as to the second, third, and fifth counts of the petition.

The material allegations in each of these counts are, first, that plaintiff in error was a common carrier engaged in interstate commerce; second, that the car hauled was "one regularly used in the movement of interstate traffic;" and, third, that the line of road over which it was hauled "is a part of a through highway over which interstate traffic is being continually hauled from one State in the United States to another State in the United States."

The consideration of these allegations will be reversed in order; and it is insisted:

First. The demurrer is not well taken as to the second, third, and fifth counts, because it is alleged in each of them that the line of road over which the car described was hauled was a part of a through highway over which interstate traffic was being continually hauled from one State into another.

This allegation is sufficient to sustain these counts, for the following reasons:

(1) *The allegation brings these counts within the provisions of section 1 of the act of March 2, 1903.*

This section requires that every car "used on any railroad engaged in interstate commerce" shall be equipped with couplers as required by the second section of the act of March 2, 1893. The term "railroad" clearly refers to the road as a highway for the carrying of merchandise and passengers; and all that is necessary to bring a car within the provisions of the act is to show that it is used on a railroad which is a highway for interstate traffic; and any construction which would limit the application of this clause to cars engaged at the time in carrying interstate commerce would be strained and unnatural. No such construction as that last mentioned would be thought of were it not for the subsequent clause "and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith," the meaning of which is thereby made uncertain, or its use rendered unnecessary.

A history of the bill may explain to some extent the appearance of this clause in the act. As the bill was introduced in the Senate, this section read as follows (report of subcommittee accompanying Senate Report No. 1930, vol. 8, Senate Reports):

> That the provisions and requirements of the act entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving wheel brakes, and for other purposes," approved March

> second, eighteen hundred and ninety-three, *shall be held to apply to all trains, locomotives, tenders, cars, or vehicles used in interstate commerce, and in the Territories and the District of Columbia, and to all other locomotives, tenders, cars, or vehicles used in connection therewith.*

The meaning of the clause is here obvious, it being intended thereby to make the safety-appliance laws applicable to all cars and other vehicles used in connection with all trains, locomotives, cars, and other vehicles used in interstate commerce.

After a hearing the Committee on Interstate Commerce reported the bill with several amendments, and among others the part here under consideration provided that the requirements of that and the former safety-appliance acts relating to couplers, etc., "shall be held to apply to all locomotives, tenders, cars, and similar vehicles used *on any railroad engaged* in interstate commerce, and in the Territories and the District of Columbia, *and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith.*"

It will be noted that except the insertion "on any railroad engaged," the language was left as in the bill as introduced, except also that for "or vehicles" was substituted "and similar vehicles." The bill passed the Senate, apparently without debate, as reported.

It was reported by the House committee without alteration as to the provisions here material (Cong. Rec., 57th Cong., 2d sess., vol. 36, pt. 3, p. 2267); and immediately after it was read, Mr. Wanger, who

had charge of the bill, in explaining the meaning of the first section, said (id., p. 2268):

> The purpose of this act is to make more efficient the provisions of the act of March 2, 1893, for the promotion of the safety of employees upon railways. It has been held by some courts that the tender of a locomotive is not a car and is therefore not affected by the provisions of the act. It has also been held that the act only applies to cars in interstate movement, and cars are very frequently, although generally designed for and used in the movement of interstate traffic, yet they are very frequently in use which is not interstate movement that requires the services of operatives upon them. Whenever an action for damages is brought by reason of the death or injury of a railroad employee, of course every defense is made, and although the car may not be equipped as directed by the act of Congress, yet that direction, as it stands, only applies when the car is being used in the movement of interstate commerce; therefore the burden is on the plaintiff in every such action to establish that fact, and is frequently an impossibility, because frequently the injury or death does not happen when the car is so engaged in interstate commerce.
>
> *It is therefore of the highest importance to make the act of Congress, as everybody supposed it would be, effective, so far as we have the power and authority, for the protection of employees by requiring the equipment referred to in the act on all cars used on railways en-*

> *gaged in interstate commerce. That is the purpose of the first section of the bill.*

It is probable, therefore, that the clause "and to all other locomotives, etc.," was permitted to remain to emphasize the object of the bill, rather than to add anything to the meaning of the preceding clause.

(2) *Section I of said act of March 2, 1903, as thus construed is constitutional.*

The question is whether by article 1, section 8, clause 3 of the Constitution, Congress is vested with the power to require that all cars used on a railroad, which constitutes an avenue for the flow of interstate commerce, be equipped with safety appliances regardless of whether they are, at the time, used in carrying interstate commerce, or in connection with other cars laden with interstate commerce.

The act does fall within said provision of the Constitution, for the following reasons:

1st. There is a real and substantial relationship between interstate commerce and the equipping with safety appliances of all cars operated on a line of road engaged in carrying such commerce.

In *Adair* v. *United States* (208 U. S., 161, 178), this court, speaking through Mr. Justice Harlan, said:

> Manifestly, any rule prescribed for the conduct of interstate commerce, in order to be within the competency of Congress under its power to regulate commerce among the States, must have some real or substantial relation to or connection with the commerce regulated.

The court there had under consideration the validity of that clause of the tenth section of the act of October 1, 1888 (ch. 1063, 25 Stat., 501), which declared that any employer or officer, agent, or receiver of an employer who—

> shall threaten any employee with loss of employment, or shall unjustly discriminate against any employee because of his membership in any such labor corporation, association, or organization,

should be guilty of a misdemeanor. This clause was held invalid, the court saying:

> Looking alone at the words of the statute for the purpose of ascertaining its scope and effect and of determining its validity, we hold that there is no such connection between interstate commerce and membership in a labor organization as to authorize Congress to make it a crime against the United States for an agent of an interstate carrier to discharge an employee because of such membership on his part.

Therefore the question here to be determined is whether there is a real or substantial relation between the interstate commerce flowing over a line of road engaged in carrying such commerce and the equipping with safety appliances all cars used on such line.

Under the cases above cited, in which the validity of the safety appliance act of 1893 was recognized, it must be treated as settled that such relation does

exist between interstate commerce and the equipping of the car in which such commerce is being carried. It is also obvious that the relationship between such commerce and the equipping of the engine and all cars which constitute the train by which the commerce is transported is equally substantial. The same employees have charge of the entire train, and an injury resulting from an improper equipment of another car would impede the transportation just as much as if resulting from an improper equipment of the car on which the commerce is carried; and the disabling of one car would delay the progress of the train just as much as the disabling of another.

Furthermore, as the power of the locomotive is transmitted through the cars, every car between the engine and the car upon which the articles of interstate commerce are carried is used in drawing or hauling such commerce, and the speed of the train is regulated and its movements controlled by brakes attached to the cars behind as well as those before such car. Consequently, as all parts of a train are handled by the same employees at the same time, and move together and stop together, and are moved and stopped by the same power which is transmitted through the different units of the train, it must be regarded as a whole; and the entire train is, therefore, in actual use in the transportation of the interstate commerce that may be carried upon any part of it.

While the relationship between the interstate commerce carried over a line used regularly for that purpose, and the equipment with safety appliances of cars and trains which happen not to be carrying such commerce, is not so immediate, yet it is insisted that it is no less real and substantial.

It can not be questioned that both the protection of the employees against injuries and the trains against accidents facilitates the handling of interstate commerce upon such a line, whether the employees or trains protected be themselves engaged in handling such commerce or not. Take, for example, any line of road which forms a link in a system over which a large amount of interstate commerce is transported. It is well known that there is hardly a train that passes over such a line that does not carry some interstate commerce; but if when a train is made up and started on its journey it has no such shipments aboard, yet probably at the first station, and almost certainly at some station along the route, a car will be attached laden with such commerce, or if it be a local freight, goods destined beyond the limits of the State will be placed aboard.

All employees upon such a line are engaged indiscriminately in handling local and interstate traffic. Between two stations the train may carry nothing but local traffic, while at the next station interstate traffic is awaiting them. Hence every moment of time that an employee is on duty he is either engaged in actually handling in some way interstate com-

merce, or it is somewhere awaiting him or is carried upon a following train, the movements of which depend upon the train which he and his associate employees are operating.

That the use of defective or relatively inefficient brakes upon a train carrying only intrastate commerce may not merely delay the movement of interstate commerce, but also result in the wreck of trains carrying that commerce is too obvious for elaborate argument.

The shorter the space within which a train can be stopped, the less the danger of collision, the greater the number of trains that may be run, and the greater the speed at which they may be safely operated. The air brake will stop a train in about one-seventh of the space required for stopping a train by the hand brake (The American Railway, by H. G. Prout, Arthur T. Hadley, and others, pp. 201, 202). It is manifest, therefore, that a return to the use of hand brakes instead of air brakes, though confined to trains which carry, or rather happen from time to time to carry, only intrastate commerce, would seriously impede and endanger interstate commerce?

Prof. Johnson, in discussing the relative merits of the hand brake and air brake, says:

> The days of the hand brake are past. The power brake has greatly lessened the risk to which employees are exposed, has decreased the danger of travel, and has made possible much greater speed for freight as well as passenger trains. (American Railway Trans-

portation, by Emery R. Johnson, Ph. D., Professor of transportation and commerce, University of Pennsylvania, p. 48.)

In Congress, when this bill was under discussion, Mr. Ryan pointed out very effectively one of the many ways in which the use of defective or inefficient brakes upon one train may lead to the wreck of other trains. In answer to a question which was intended to show that the regulations concerning the use of air brakes could have no effect upon the safety of the traveling public, because all passenger trains were already provided with them, he said: "* * * wrecks of freight trains occur by reason of not being properly equipped with air brakes, and these freight cars are thrown on other tracks and very serious wrecks of passenger trains have taken place in consequence. It is to prevent such occurrences that this law ought to be enforced." (36th Cong. Rec., 2522.) He might have added that trains carrying interstate passengers frequently move over the same road as trains carrying only intrastate commerce, and that the inability of the latter to stop within a short space because of defective or inefficient brakes may easily lead to the wreck of the former, especially in the case of head-on collisions where trains are often wrecked despite the fact that their engineers become aware of the danger when the trains are still some distance apart.

Defective or relatively inefficient couplers may, and probably will, result in a waste of time in coupling. This is a matter of no small consequence. Under

present conditions the railroads are frequently pushed to the limit to handle the traffic. The speed of one train necessarily affects in a greater or less degree the speed of other trains. The rapidity with which intrastate commerce can be handled of course directly affects the rapidity with which interstate commerce can be handled. The blocking of one inevitably leads to the blocking of the other.

But aside from this, defective or relatively inefficient couplers upon such trains may result in the breaking in two of trains or in injury to employees in coupling, either of which may lead not merely to the temporary blocking of interstate commerce, but also to the wreck of trains engaged therein. How the breaking in two of any train upon a railroad engaged in interstate commerce may delay and endanger that commerce, is too evident for comment. It can also be readily seen how injury to an employee on a train carrying only intrastate traffic may endanger and delay interstate commerce. For example, let it be assumed that a train whose couplers are of the link and pin type is moving over a railroad engaged in interstate commerce between stations wholly within a State and carrying only intrastate traffic. Its crew, according to custom, consists of two brakemen, a conductor, a fireman, and an engineer. One of the brakemen is seriously injured in an attempt to make a coupling on a sidetrack too short to accommodate the entire train and with which there is no telegraphic connections. The delay and confusion which inevitably accompany a serious accident may, from neglect

to give proper warning, easily result in a collision from an approaching train. But, suppose a collision does not there occur. The train pulls out, but necessarily with an inadequate crew. In common humanity the conductor's attention is taken up with the injured brakeman, who happens to be the flagman. Suddenly the air brakes refuse to work and are automatically thrown on, and the fireman and the forward brakeman hasten to repair it. In the absence of the regular flagman the following train, which is carrying interstate traffic, is signaled too late, and its wreck, be it passenger or freight, follows as a matter of course. The possible consequences of such an accident are so serious that Congress should not be denied the power to take every step to prevent it on the theory that it can rarely occur in that manner or that the injury of the brakeman is too remote a cause of the accident. Unlike liability in accident cases, the proximity or remoteness of the cause has nothing to do with the power of Congress to legislate upon such matters. The question is, May the cause produce such an effect, however remote it may be?

Moreover, the immediate and direct effect of an injury to an employee in a switch yard is to delay interstate commerce, though he be not handling such commerce at the time. The moving of all cars is for the time stopped, and the yard becomes congested, and it becomes impossible for incoming trains to enter the yard or for outgoing trains to be made up and depart on time. In fact, wherever an injury may occur to an employee connected with

the movement of any train upon a railroad engaged in interstate commerce the probabilities are that it will result in hindering and delaying the handling of such commerce. But that is not its most serious consequence. The care and skill with which such an employee performs his task affects the safety of all who have occasion to travel over the railroad, whether passenger or employee. The injury to such an employee, therefore, naturally results in increased risk to interstate employees and passengers, because his place is taken by a green hand, or an attempt is made to carry on the work short handed.

The far reaching consequences of an injury to such an employee are graphically described in "An Address To The Operating Men Of The Chicago & Northwestern Railway On The Prevention Of Accidents," by Ralph C. Richards, general claim agent of the Chicago & Northwestern Railway, in part as follows:

> Do you know that every time we have one of these accidents it results in an increased risk to the rest of you because some new man who may be incompetent, or careless—he will certainly be inexperienced—has to take the place of the man who has been injured, or the place of the man who has been killed? We know what the result will be, and we also know that not only does the risk increase to the other men left in the service but that the efficiency of the organization decreases. For example: Take from the service for ten days, the foreman at the roundhouse, the train

> master, the superintendent, the section foreman, the roadmaster, the brakeman or conductor, or the engineer and fireman on some special job or some special train, and put a green man in their place, we all know that unless we happen to get some extraordinarily experienced, competent man, that it will increase the risk to the men left on the trains, to everybody in the shops or the roundhouses or on the tracks, and at the same time we are decreasing the efficiency of the organization, which goes down accordingly (p. 12).

How then can it be denied that on every road engaged in handling interstate commerce, it is a matter of the most vital importance that every train be properly equipped with modern appliances, in order to keep all commerce flowing over it moving at a reasonable rate of speed; and that the *necessary* result of such equipment, without relation to the character of the commerce actually carried in the train possessing it, is to greatly facilitate the handling of all commerce which passes over the line.

A careful examination of the regulations prescribed in the safety appliance acts, and their natural and probable effect, establishes this beyond a doubt.

The first provision relates to the use of brakes, and provides for the use of the power or air brake on the locomotive, and upon a certain percentage of the cars of every train used on a railroad engaged in interstate commerce.

This provision greatly promotes the welfare of interstate commerce, because, as above shown, with

the air brake the train can be stopped much more quickly and in a much shorter distance, and the use of a less effective brake, such as the old hand brake, though confined to work trains and trains carrying only intrastate commerce, would seriously impede and endanger interstate commerce.

The use of automatic couplers brings the cars of a train close against each other (36th Cong. Rec., 2520) and diminishes jolting (Amer. Railway Transportation, Emory R. Johnson, p. 47), and consequently, jerking and sagging, all of which tend to cause the breaking in two of trains and thereby the wrecking of other trains, including, of course, trains engaged in interstate commerce. Moreover, the use of couplers which in fact couple automatically without the necessity of employees going between the cars, even upon trains carrying no interstate commerce, tends to promote the rapid movement of that commerce. For, aside from the fact that it is natural to suppose that automatic couplers can be operated more quickly than couplers which do not couple automatically, it is evident that wherever employees have to go between the cars to make a coupling, their safety demands a slower and more cautious movement of the cars, and thereby diminishes the speed with which intrastate trains can be operated, which, in turn, necessarily affects the speed with which interstate trains can be operated. Even the security of the grab irons and the standard height of the drawbars tend, in a greater or less degree, to facilitate the movement of interstate commerce, since the security

of the former enables the employee to perform his task more rapidly, and the standard height of the latter tends to prevent a failure to couple, and the injury and delay which naturally arise from such a failure when caused by drawbars being of substantially different heights.

If it be suggested that, under the construction of the act here contended for, it could be made to apply to all cars in trains engaged solely in construction work, known as work trains, although such cars might never cross the line between two States, the reply is that it is apparent that there is every reason that such trains should be subjected to the requirements of these statutes. Such work trains are continually engaged in moving cars between points on the road, loaded with material for repairs, and they constitute a serious obstruction to the carrying of traffic over the line. It is a matter of most vital importance that they be handled with extreme care, as otherwise they are liable at any time to cause a collision and the consequent blocking of the track; and, furthermore, they should be handled expeditiously in order that they may be promptly moved along the main line and placed upon a siding which may be many miles distant. Hence, they should be equipped with every modern device in order that the occurrence of accidents on such trains or their colliding with others may be reduced to a minimum. In fact, there is more danger of accidents in connection with such trains than with any other single train running over the line of road.

2nd. The fact that the act of March 2, 1893, purports to have been enacted for the purpose of protecting travelers and employees, can not affect the constitutionality of either that or of any subsequent safety appliance act.

The validity of the act depends upon the *relationship* of the things required to be done and interstate commerce, and not upon the object to be attained. If that relationship is real and substantial, then any object can be worked out through it. In recognizing the constitutionality of the act of March 2, 1893, this court in *Adair* v. *United States* (208 U. S., 177) said:

> In this connection we may refer to *Johnson* v. *Railroad* (196 U. S., 1), relied on in argument, which case arose under the act of Congress of March 2, 1893 (27 Stat., 531, ch. 196). That act required carriers engaged in interstate commerce to equip their cars used in such commerce with automatic couplers and continuous brakes, and their locomotives with driving-wheel brakes. *But the act upon its face showed that its object was to promote the safety of employees and travelers upon railroads; and this court sustained its validity upon the ground that it manifestly had reference to interstate commerce and was calculated to subserve the interests of such commerce by affording protection to employees and travelers. It was held that there was a substantial connection between the object sought to be attained by the act and the means provided to accomplish that object.*

Hence, if by the act of March 2, 1903, interstate commerce is substantially affected, and its welfare

thereby promoted, the act is valid, regardless of the object had in mind when it was passed.

But it will be observed that no object is declared in the title of this act other than a purpose to amend the former safety appliance acts; and, moreover, an examination of the debates upon this bill, and especially upon the feature requiring at least 50 per cent of the cars to be equipped with air brakes, will show that the additional safety to interstate commerce and expedition in handling it, arising from such equipment, was one of the principal objects which prompted the passage of the act.

3d. The decisions of this court upon analogous questions clearly show that the required relationship exists between interstate commerce, and the things required by the act of March 2, 1903, to be done by those operating railroads engaged in interstate commerce.

The following decisions are cited as having a direct and material bearing upon the question whether the relationship between interstate commerce and the equipment of *all* cars used upon a railroad engaged in carrying such commerce is substantial.

(a) *Congress has power even to construct roads to be used in interstate commerce, and to grant charters authorizing the construction of highways for that purpose.*

Thus it was that by act of Congress the old Cumberland National Road was constructed; and in *California* v. *Pacific Railroad Co.* (127 U. S., 1), wherein this court held that an assessment for taxes

which included franchises of a railroad company conferred by the United States was invalid, it was said:

> The power to construct, or to authorize individuals or corporations to construct, national highways and bridges from State to State, is essential to the complete control and regulation of interstate commerce. Without authority in Congress to establish and maintain such highways and bridges it would be without authority to regulate one of the most important adjuncts of commerce. This power in former times was exerted to a very limited extent, the Cumberland or National road being the most notable instance. Its exertion was but little called for, as commerce was then mostly conducted by water, and many of our statesmen entertained doubts as to the existence of the power to establish ways of communication by land. But since, in consequence of the expansion of the country, the multiplication of its products and the invention of railroads and locomotion by steam, land transportation has so vastly increased, a sounder consideration of the subject has prevailed and led to the conclusion that Congress has plenary power over the whole subject (p. 39).

In *Luxton* v. *North River Bridge Co.* (153 U. S., 525, 529) it was said:

> The Congress of the United States, being empowered by the Constitution to regulate commerce among the several States, and to pass all laws necessary or proper for carrying into execution any of the powers specifically

> conferred, may make use of any appropriate means for this end.
>
> * * * * *
>
> Congress therefore may create corporations as appropriate means of executing the powers of government, as, for instance, a bank for the purpose of carrying on the fiscal operations of the United States, or a railroad corporation for the purpose of promoting commerce among the States.
>
> * * * * *
>
> Congress has likewise the power, exercised early in this century by successive acts in the case of the Cumberland or National Road from the Potomac across the Alleghenies to the Ohio, to authorize the construction of a public highway connecting several States.

If Congress has the power to construct a road for the carriage of interstate commerce, it clearly has the power to adopt regulations controlling every detail as to the use of such road; and if it can incorporate a company and confer upon it the power to conduct a road and to engage in carrying over the same interstate commerce, then it can insert in the charter of such company any regulations it might deem advisable relating to the details of the operation of such road, including a provision requiring that the company put such equipment as Congress might prescribe upon its rolling stock; and that, regardless of whether such rolling stock might, at the time when in actual use, be engaged in carrying interstate commerce, or as an incident to its business be carrying intrastate traffic.

But the authority to grant such a charter and to require such equipment is derived solely from the commerce clause of the Constitution, and the power of Congress can be no broader when exercised through the medium of a charter than when exercised directly upon a railroad company which is engaged in interstate commerce, operating under a State charter. And if the power to require such equipment exists in the one case it likewise exists in the other.

(b) *This court has never hesitated to declare the power of the United States to remove obstructions of every character from every avenue of commerce that may directly or indirectly interfere with interstate traffic.*

In *Willson* v. *Blackbird Creek Marsh Co.* (2 Pet., 214) the court held plaintiff in error liable for injuries to a dam across a navigable stream which lay entirely within the State of Delaware; but the decision rested wholly upon the ground that the dam had been authorized by the legislature of the State *and that Congress had passed no law assuming control of the creek*, but the power of Congress to remove the dam as an obstruction, if it saw fit to do so, was distinctly recognized.

Gilman v. *Philadelphia* (3 Wall., 713) was an action brought to prevent the construction of a bridge, which had been authorized by the legislature, across the Schuylkill River, a navigable stream lying wholly within the State of Pennsylvania. *The court held that Congress having passed no legislation with reference to the navigability of this stream*, the construction of the bridge could not be enjoined; but

again the principle was recognized that Congress could intervene to remove all obstructions to the navigation of the stream.

In *Pennsylvania* v. *Wheeling Bridge Co.* (13 How. 518) this court held that the construction of a bridge across the Ohio River at such an elevation as to interfere with the passage of boats was unlawful, and ordered the same abated as a nuisance.

In the case of *In re Debs* (158 U. S., 565) a bill was filed against the officers of the American Railway Union to enjoin interference with the carriage of the United States mails, and with interstate commerce over certain railroads, it being alleged that a conspiracy, the details of which were set out at length, existed whereby the operation of trains on such roads would be greatly interfered with. An injunction was granted, but the defendants refused to obey the same; and the case in this court was upon an appeal from a judgment of the Circuit Court of the Northern District of Illinois holding them guilty of contempt of court. This court, after an exhaustive review of the authorities and a careful consideration of the principles involved, affirmed the judgment of the court below; and in stating its conclusion, among other things, said:

> Summing up our conclusions, we hold that the Government of the United States is one having jurisdiction over every foot of soil within its territory, and acting directly upon each citizen; that while it is a Government of enumerated powers, it has within the limitsof those

> powers all the attributes of sovereignty; that to it is committed power of interstate commerce and the transmission of the mail; that the powers thus conferred upon the National Government are not dormant, but have been assumed and put into practical exercise by the legislation of Congress; *that in the exercise of those powers it is competent for the Nation to remove all obstructions upon highways, natural or artificial, to the passage of interstate commerce or the carrying of the mail.*

From these authorities it is apparent that it is not essential before the power of the United States can be exerted that there be an actual interference with interstate commerce in process of transportation, but that such interference may be anticipated and the power of the Government may be exercised to prevent the happening of such interference.

Acting upon this principle, each Congress appropriates millions of dollars for the purpose of removing obstructions to navigation in streams. The work thus authorized is performed, not to hasten the progress of some particular boat loaded with interstate commerce or certain logs floating from one State to another, but in order that when such commerce shall pass that way its progress will not be impeded. Upon the same theory the injunction was granted against the American Railway Union inhibiting its officers from putting into effect a conspiracy to stop the operation of trains upon railroads carrying interstate commerce and the mails, the object being that such commerce, when

it should start on its journey, might be moved with proper rapidity and without interruption.

The act of March 2, 1903, rests upon precisely the same principle. As above shown, the wrecks of trains, blocking the traffic over the lines, and often destroying the commerce carried, are largely prevented by a compliance with this act, and the progress of such traffic is greatly accelerated. Hence, Congress has the power to provide, by the method adopted, against conditions which thus interfere with and impede the flow of interstate commerce.

(c) *The United States may even prevent interference with a stream not navigable, but which is tributary to a navigable stream, in order to preserve the navigability of the stream to which it is tributary.*

In *United States* v. *Rio Grande Irrigation Co.* (174 U. S., 690, 699, 709) the defendant company was threatening to divert a part of the flow of the Rio Grande at a certain point, for irrigation purposes; at such point the river was not navigable, but if the flow was diverted it would materially affect the navigability of the stream some distance below. This court maintained the bill and enjoined the company from interfering with the stream, and in illustrating the grounds of its decision said:

> The Hudson River runs within the limits of the State of New York. It is a navigable stream and a part of the navigable waters of the United States, so far, at least, as from Albany southward. One of the streams which flows into it and contributes to the vol-

ume of its waters is the Croton River, a non-navigable stream. Its waters are taken by the State of New York for domestic uses in the city of New York. Unquestionably the State of New York has a right to appropriate its waters, and the United States may not question such appropriation, unless thereby the navigability of the Hudson be disturbed. On the other hand, if the State of New York should, even at a place above the limits of navigability, by appropriation for any domestic purposes, diminish the volume of waters, which, flowing into the Hudson, make it a navigable stream, to such an extent as to destroy its navigability, undoubtedly the jurisdiction of the National Government would arise and its power to restrain such appropriation be unquestioned; and within the purview of this section it would become the right of the Attorney General to institute proceedings to restrain such appropriation.

The principle here declared is the same as that stated in the last paragraph; but it is carried a degree further, as the power of the United States was here exerted to remove a condition which was still more remote from the actual interference with interstate commerce.

(d) *In order to facilitate and hasten the transportation of interstate commerce, the several States are not permitted to enact any law or adopt any regulation which will materially interfere with or impede interstate transportation.*

In *Illinois Central Railroad Co.* v. *Illinois* (163 U. S., 142, 153) the facts before the court and the court's conclusion are thus stated:

> The effect of the statute of Illinois, as construed and applied by the supreme court of the State, is to require a fast mail train, carrying interstate passengers and the United States mail, from Chicago in the State of Illinois to places south of the Ohio River, over an interstate highway established by authority of Congress, to delay the transportation of such passengers and mails, by turning aside from the direct interstate route, and running to a station three miles and a half away from a point on that route, and back again to the same point, and thus traveling seven miles which form no part of its course, before proceeding on its way; and to do this for the purpose of discharging and receiving passengers at that station, for the interstate travel to and from which, as is admitted in this case, the railroad company furnishes other and ample accommodation.
>
> This court is unanimously of opinion that this requirement is an unconstitutional hindrance and obstruction of interstate commerce and of the passage of the mails of the United States.

In *Lake Shore & M. S. Railway Co.* v. *Ohio* (173 U. S., 285) the court held that a statute of Ohio which required that—

> Each company shall cause three, each way, of its regular trains carrying passengers, if so many are run daily, Sundays excepted, to stop

> at a station, city, or village, containing over three thousand inhabitants, for a time sufficient to receive and let off passengers—

was, "*in the absence of legislation by Congress on the subject,*" not repugnant to the commerce clause of the Constitution.

This decision was based on the assumption that—

> the statute is not in itself unreasonable; that is, it has appropriate relation to the public convenience, does not go beyond the necessities of the case, and is not directed against interstate commerce.

This case was distinguished from the *Illinois Central Railroad case*, because there the trains were diverted from the direct route. From the decision in this case Mr. Justices Shiras, Brewer, and Peckham dissented.

In *Cleveland, etc., Railway Co.* v. *Illinois* (177 U. S., 514) the court held that a statute, which required all regular passenger trains to stop a sufficient length of time at county seats to receive and let off passengers with safety, when it appeared that the defendant company furnished four regular passenger trains per day each way, which stopped at all county seats, and were sufficient to accommodate all local and through business, was invalid as applied to an express train intended only for through passengers from St. Louis to New York; the court saying:

> It is evident that the power attempted to be exercised under this statute would operate as a serious restriction upon the speed of trains engaged in interstate traffic, and might, in some cases, render it impossible for trunk

> lines running through the State of Illinois to compete with other lines running through States in which no such restrictions were applied.

In *Mississippi Railroad Commission* v. *Illinois Central Railroad Co.* (203 U. S., 335), the court held:

> While a State railroad commission may, in the absence of congressional legislation, order a railroad company to stop interstate trains at stations where there is only an incidental interference with interstate commerce, based on a legal exercise of the police power of the State exerted to secure proper facilities for the citizens of the State, where the railroad company has—as in this case—furnished all proper and reasonable facilities, such an order is an improper and illegal interference with interstate commerce and void as a violation of the commerce clause of the Constitution.

These cases but emphasize the principle declared in the other decisions of this court above cited, that the United States may remove or provide against any impediment to the transit of interstate commerce; and if it is wholly beyond the power of a State to require the stopping of trains at stations for the few moments necessary to comply with the legislative acts and order of the Mississippi Railroad Commission which were involved in those cases, and the sole power with reference thereto was vested in the United States, the United States is certainly vested with power to provide against the disabling of employees and the wrecks of trains and other accidents, which will

entirely block or very materially impede interstate traffic on a railroad engaged in interstate commerce.

(e) *Congress may enact laws regulating the qualifications of those actually engaged in the carrying of interstate commerce, although such persons may at times in the pursuit of their avocation, be solely engaged in handling intrastate commerce.*

In *The Daniel Ball* (10 Wall., 557) the question was whether a steamer plying between two points in the same State, but which from time to time carried commerce passing between that and other States, was required to procure a license under an act which provided that—

> It shall not be lawful for the owner, master, or captain of any vessel, propelled in whole or in part by steam, to transport any merchandise or passengers upon the bays, lakes, rivers, or other navigable waters of the United States, after the first of October of that year without having first obtained from the proper officer a license under existing laws.

and it was held that the act was applicable to the steamer in question.

In *Smith* v. *Alabama* (124 U. S., 465, 479, 480) this court sustained an Alabama statute which prescribed qualifications for engineers operating trains or engines within that State, though such trains may have carried interstate commerce, upon the ground that Congress, up to that time, had not legislated upon the subject; but the court expressly declared that—

> It would, indeed, be competent for Congress to legislate upon its (the statute of Alabama)

> subject matter, and to prescribe the qualifications of locomotive engineers for employment by carriers engaged in foreign or interstate commerce. It has legislated upon a similar subject by prescribing the qualifications for pilots and engineers of steam vessels engaged in the coasting trade and navigating the inland waters of the United States while engaged in commerce among the States (Rev. Stat., title 52, secs. 4399–4500), and such legislation undoubtedly is justified on the ground that it is incident to the power to regulate interstate commerce.
>
> * * * * *
>
> The power might with equal authority be exercised in prescribing the qualifications for locomotive engineers *employed by railroad companies engaged in the transportation of passengers and goods among the States*, and in that case would supersede any conflicting provisions on the same subject made by local authority.

The case of *New York, N. H. & H. R. R. Co.*, v. *New York* (165 U. S., 628) is analogous in principle, though a little different in its facts. It was there held that the statutes of New York regulating the heating of steam passenger cars, and directing guards and guard posts to be placed on railroad bridges and trestles and the approaches thereto, were, *in the absence of action by Congress*, valid.

The plain inference from all these cases, and, in fact, the positive declaration of the court, is that Congress can enact regulations with reference to the qualifications of engineers who are "employed by

railroad companies engaged in" interstate commerce, and that it can pass laws providing for appliances on railroad bridges and trestles, which would promote the safety of trains. Such power must, of course, result solely from the fact that the absence of such appliances and want of qualifications in the engineers might seriously interfere with the transportation of interstate commerce. A color-blind engineer running a train laden with domestic commerce over a railroad engaged in interstate commerce traffic, is just as dangerous to interstate commerce carried on other trains as if that particular train was carrying interstate commerce; and hence, the court made no distinction in declaring that Congress had power to prescribe the qualifications of engineers, as to the character of trains they might be operating, the only requisite being that they should be employed by "railroad companies engaged in the transportation of passengers and goods among the States."

(f) *State statutes relating to commerce have been held to be valid where they do not adversely affect but aid interstate commerce or where they have no relationship thereto; but when such statutes have substantially affected interstate or foreign commerce adversely they have been universally held to be invalid.*

In *County of Mobile* v. *Kimball* (102 U. S., 691, 698) this court sustained the validity of an Alabama statute providing for the improvement of the harbor of Mobile solely on the ground that the statute did not impair its free navigation or defeat any system for improvement provided by the General

Government, and throughout the opinion it was clearly recognized that the power of Congress is supreme in regard to matters substantially connected with the safe and expeditious movement of interstate commerce over interstate highways, despite the fact that their regulation may necessarily affect in a more or less degree intrastate commerce.

In *State Freight Tax* (15 Wall., 232) it was held that a statute of a State imposing a tax upon freight received within the State and carried out of it, or received without the State and brought within it, was repugnant to the commerce clause of the Constitution and void.

In *Ratterman* v. *Western Union Telegraph Co.* (127 U. S., 411) it was held that a single tax assessed under the laws of a State upon receipts of a telegraph company, which were partly derived from interstate commerce and partly from commerce within the State, and which were capable of separation, but were returned and assessed in gross and without separation or apportionment, was invalid in proportion to the extent that such receipts were derived from interstate commerce.

In *Pullman Co.* v. *Adams* (189 U. S., 420) it was held that an act which imposed a tax on each sleeping and palace car company carrying passengers from one point to another within a State was valid. This decision was based on the assumption that such companies were free to refuse to accept passengers be-

tween points within the State. The court upon this point said:

> If the clause of the State constitution referred to were held to impose the obligation supposed and to be valid, we assume without discussion that the tax would be invalid. For then it would seem to be true that the State constitution and the statute combined would impose a burden on commerce between the States analogous to that which was held bad in *Crutcher* v. *Kentucky* (141 U. S., 47). On the other hand, if the Pullman company, whether called a common carrier or not, had the right to choose between what points it would carry, and therefore to give up the carriage of passengers from one point to another within the State, the case is governed by *Osborne* v. *Florida* (164 U. S., 650, pp. 421, 422).

The many decisions of this court relating to this question were reviewed by Mr. Justice Harlan in delivering the opinion of the court in *Western Union Telegraph Co.* v. *Kansas* (216 U. S., 1) wherein the statute of Kansas which provided, among other things, that before a corporation of another State could do local business in Kansas it should pay to the State treasurer a charter fee of a certain percentage on its authorized capital stock, was held to be unconstitutional, one ground being that it was in violation of the commerce clause of the Constitution.

By these and other decisions it is settled that the State can not burden interstate commerce by the

imposition of a tax thereon, either directly or indirectly. But if such indirect and remote interference with interstate commerce is prohibited to the States, and as the power of the United States with reference thereto covers the entire ground, it can certainly enact any legislation which will substantially affect interstate commerce, though such effect may be as remote as that which is prohibited to the States.

(g) *Other cases bearing materially upon the power of Congress to pass laws remotely affecting interstate commerce.*

In *United States* v. *Coombs* (12 Pet., 71, 77, 78) defendant was indicted under a statute which provided that—

> If any person shall plunder, steal, or destroy any money, goods, merchandise, or other effects from, or belonging to, any ship or vessel, or boat, or raft which shall be in distress, or which shall be wrecked, lost, stranded or cast away, upon the sea, or upon any reef, shoal, bank, or rocks of the sea, or in any place within the admiralty or maritime jurisdiction of the United States

he shall be deemed guilty of a felony. The court held that this statute meant to prohibit and punish the plunder or destruction of property belonging to a ship, when on shore, as well as at places below high-water mark; and further held that the act as so interpreted was valid, because—

> Under the clause of the Constitution giving power to Congress "to regulate commerce

> with foreign nations, and among the several States," Congress possess the power to punish offenses of the sort which are enumerated in the ninth section of the act of 1825 now under consideration. The power to regulate commerce includes the power to regulate navigation, as connected with the commerce with foreign nations and among the States. It was so held and decided by this court, after the most deliberate consideration, in the case of *Gibbons* v. *Ogden* (9 Wheat., 189–198). It does not stop at the mere boundary line of a State; nor is it confined to acts done on the water, or in the necessary course of the navigation thereof. *It extends to such acts, done on land, which interfere with, obstruct, or prevent the due exercise of the power to regulate commerce and navigation with foreign nations and among the States.*

Certainly the stealing of property cast upon the shore from a wrecked ship is more remotely connected with interstate or foreign commerce than the operation of a car equipped with safety appliances upon a line of railroad engaged in interstate commerce.

In *Louisville & Nashville Railroad Co.* v. *Eubank* (184 U. S., 27), the facts were that the railroad company was charging freight at the rate of 12 cents per 100 pounds between Nashville and Louisville, while from Franklin, Ky., to Louisville—a much shorter distance—it charged defendant in error Eubank 25 cents per 100, and the action was brought to recover

the difference between these two rates. The constitution of Kentucky provided that it should be—

> unlawful for any person or corporation, owning or operating a railroad in this State, or any common carrier, to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of property of like kind, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance.

It appeared that there was water competition between Nashville and Louisville, and if the railroad were compelled to charge 25 cents a 100 from that point it would get none of the traffic, and, as it was necessary for the cars, which would otherwise be empty, to move between those points, the company could afford to carry the tobacco at 12 cents rather than haul the cars empty, although the 25-cent rate between Franklin and Louisville was a reasonable one. This court held that, although the haul from Franklin to Louisville was entirely within the State of Kentucky, yet, that, inasmuch as an order to desist from charging more between Franklin and Louisville than between Nashville and Louisville would materially affect the rates between the latter two points, which were situated in different States, the provision of the Kentucky constitution was, to that extent, invalid, and could not be applied to such shipments.

The *Employers' Liability Cases* (207 U. S., 463, 495) are, it is submitted, very closely in point. The act there under consideration provided that every common carrier engaged in commerce between the several States should be liable

> to any of its employees * * * for all damages which may result from the negligence of any of its officers, agents, or employees, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track roadbed, ways, or works.

This act, by a majority of the court, was held void, because it was so broad in its scope that it included an injury to any employee of such carrier caused by the negligence of any other employee, and that regardless of the circumstances of the injury, and whether or not the employment at the time had any connection with the carrying of interstate commerce. But it was insisted by the company that it was invalid on the further ground that there was absolute want of power in Congress to enact this statute, because it was addressed solely to the regulation of the relations of the employer to those whom he employed, and the relations of those employed among themselves, which subjects did not fall within the power conferred upon Congress to regulate commerce. The court unanimously agreed that this contention was erroneous, and upon this question Mr. Justice (now Mr.

Chief Justice) White in delivering the opinion of the majority said:

> The test of power is not merely the matter regulated, but whether the regulation is directly one of interstate commerce or is embraced within the grant conferred on Congress to use all lawful means necessary and appropriate to the execution of the power to regulate commerce. We think the unsoundness of the contention, that because the act regulates the relation of master and servant, it is unconstitutional, because under no circumstances and to no extent can the regulation of such subject be within the grant of authority to regulate commerce, is demonstrable. We say this because we fail to perceive any just reason for holding that Congress is without power to regulate the relation of master and servant, to the extent that regulations adopted by Congress on that subject are solely confined to interstate commerce, and are therefore within the grant to regulate that commerce or within the authority given to use all means appropriate to the exercise of the powers conferred. To illustrate: Take the case of an interstate railway train, that is, a train moving in interstate commerce, and the regulation of which therefore is, in the nature of things, a regulation of such commerce. It can not be said that because a regulation adopted by Congress as to such train when so engaged in interstate commerce deals with the relation of the master to the servants operating such train or the relations of the servants engaged in such oper-

> ation between themselves, that it is not a regulation of interstate commerce. This must be, since to admit the authority to regulate such train, and yet to say that all regulations which deal with the relation of master and servants engaged in its operation are invalid for want of power would be but to concede the power and then to deny it, or at all events to recognize the power and yet to render it incomplete.

This principle was discussed at length by Mr. Justice Moody in his dissenting opinion, and it was in that connection that he remarked:

> If the statute now before us is beyond the constitutional power of Congress, surely the safety appliance act is also void, for there can be no distinction in principle between them (p. 529).

In *Gibbons* v. *Ogden* (9 Wheat., 1, 194, 195) in defining what commerce is wholly within the power of a State to regulate, Mr. Chief Justice Marshall said:

> It is not intended to say that these words ("among the several States") comprehend that commerce which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, *and which does not extend to or affect other States.*
>
> * * * * *
>
> The genius and character of the whole Government seem to be that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally; but not to those

> which are completely within a particular State, *which do not affect other States*, and with which it is not necessary to interfere for the purpose of executing some of the general powers of the Government.

This is a distinct recognition that wherever a particular concern affects other States (by which is manifestly meant commerce extending into other States) it is subject to the regulation of Congress; and that it is only such concern that is completely within a particular State and has no substantial relation to interstate commerce that is subject to State regulation alone.

Interstate Commerce Commission v. *Illinois Central Railroad Co.* (215 U. S., 452, 474) involved the validity of an order of the Interstate Commerce Commission requiring that in the distribution of cars among the several coal-mining companies, the railroad company should take into consideration its own fuel cars. It was contended by the railroad company, and the circuit court had held, that, inasmuch as the coal loaded upon those cars became the railroad company's property when loaded thereon, commerce there ceased, and consequently was not interstate, and that the authority of the Interstate Commerce Commission, therefore, did not extend to the same.

This court held that this contention was unsound, expressing its views with reference thereto in the following language:

> Under these conditions it is clear that doubt, if it exist, must be resolved against the

soundness of the contention relied on. But that rule of construction need not be invoked, as we think, when the erroneous assumption upon which the proposition must rest is considered, its unsoundness is readily demonstrable. That assumption is this, that commerce in the constitutional sense only embraces shipment in a technical sense and does not, therefore, extend to carriers engaged in interstate commerce, certainly in so far as so engaged, and the instrumentalities by which such commerce is carried on, a doctrine the unsoundness of which has been apparent ever since the decision in *Gibbons* v. *Ogden* (9 Wheat., 1), and which has not since been open to question. It may not be doubted that the equipment of a railroad company engaged in interstate commerce, included in which are its coal cars, are instruments of such commerce. From this it necessarily follows that such cars are embraced within the governmental power of regulation which extends, in time of car shortage, to compelling a just and equal distribution and the prevention of an unjust and discriminatory one.

The corporation as a carrier engaged in interstate commerce being then, as to its interstate commerce business, subject to the control exerted by the act to regulate commerce, and the instrumentalities employed for the purpose of such commerce, being likewise so subject to control, we are brought to consider the remaining proposition.

This decision must rest upon the theory that the consideration of or the failure to consider such cars, in prorating the empty cars for distribution, necessarily affects the amount of coal which is shipped beyond the limits of the State; and further, upon the theory that the very fact that such cars are from time to time used as vehicles of interstate commerce impresses upon them such interstate commerce character that they are subject to the laws of Congress, whether at the particular time they be actually engaged in carrying such commerce or not.

(h) *This act has been sustained by the lower Federal courts.*

In *Wabash R. Co.* v. *United States* (168 Fed., 1) the petition alleged that the company was an interstate-commerce carrier, owning and operating an interstate railroad and engaged in transporting thereover interstate traffic, and that on the date named it hauled on its line of railroad a car that was not equipped with automatic couplers, and that the car was one "regularly used in the movement of interstate traffic, but at the time in question was empty." To this petition the company filed a demurrer, which was overruled, and the judgment of the district court was affirmed by Judges Grosscup and Baker, Judge Seaman dissenting. Judge Grosscup based his concurrence in the affirmance solely upon the ground that it was competent for Congress to make a law requiring all cars used on a railroad engaged in interstate commerce to be equipped with safety appli-

ances, and his reasons therefor are expressed in the following language:

> Now, it seems to me that in the matter of safety appliances, in the very nature of the case, the operation of trains by a railroad engaged in interstate commerce, irrespective of whether the trains are intrastate or interstate trains (that is to say, the operation of the railroad as an entirety), leads to the same view and for the same practical reasons. Primarily these safety-appliance acts are to safeguard railway employees—the car not being the unit, but the train of which the car is the constituent—and in carrying out this primary object the necessity of regulation extends to every car to be operated; not only those to be operated from State to State, but those to be operated wholly within a given State. Indeed, one of the chief dangers that regulation is intended to safeguard against is that incurred in the making up and the unmaking of trains in the switch yards—the putting together of the constituents into a unit and their subsequent dissolution—in the process of which all distinction between trains and cars that have been or are to be used in interstate commerce or intrastate commerce is obliterated, thereby subjecting the employees of trains that have come from or are going into interstate commerce to all the dangers that lurk in all the cars used on the road in both interstate and intrastate operation. Besides, trains that are purely intrastate, unregulated in the matter of automatic couplings, may be a menace to persons and prop-

> erty carried by interstate trains, differing in that respect only in degree from the menace of trains unequipped with air or other power brakes—a view that seems to bring the subject matter of regulation respecting automatic couplings within the power of the General Government, for, power "to regulate" being unquestioned, the boundaries of that power are not determined by the degree of the need of regulation, but by the question whether there be a need that is a substantial one (pp. 9, 10).

In *United States* v. *International and Great Northern R. R. Co.* (174 Fed., 638) the act was held to apply to a car which was hauled in a train, one car of which contained interstate traffic. This case appears, however, to have gone off rather upon a question of construction of the statute than its constitutionality.

III.

If necessary to sustain the constitutionality of the act of March 2, 1903, it might with reason be construed to apply solely to trains, locomotives, tenders, cars, and other vehicles actually engaged in carrying interstate commerce, and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith.

In *United States* v. *Coombs* (12 Pet., 71, 76) the court said:

> If the section admits of two interpretations, one of which brings it within, and the other presses it beyond, the constitutional authority of Congress, it will become our duty to adopt the former construction; because a presump-

> tion ought never to be indulged that Congress meant to exercise or usurp any constitutional authority unless that conclusion is forced upon the court by language altogether unambiguous.

And this principle has in numerous instances been applied by this court.

While the construction heretofore contended for is the natural one, yet it is not the only *possible* interpretation.

The word "engaged" might be made to modify "trains, locomotives, tenders, cars, and similar vehicles," instead of "railroad," and if so construed, it would mean that all trains, cars, etc., which are "engaged" in interstate commerce, and all other cars, etc., used in connection therewith, should be equipped with the appliances mentioned.

This, in fact, is the meaning attached to it in the report of the Senate committee, wherein it was said that the purpose of the amendment was—

> to make the provisions of this bill and the provisions of the acts of 1893 and 1896 applicable to the Territories and the District of Columbia, and to require there and elsewhere the equipment of tenders, cars, and similar vehicles used in interstate commerce, and in connection therewith, with automatic couplers, grab irons, etc.

Furthermore, such a construction would give a meaning to the clause "and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith," when otherwise it must be conceded that this clause is apparently surplussage.

IV.

The court properly overruled the demurrer to the second, third, and fifth counts, because it is alleged in each of these counts that the car having the defective coupler was "one regularly used in the movement of interstate traffic."

It is submitted that this allegation is sufficient under either the act of March 3, 1893, or the act of March 3, 1903.

The language in the second section of the former act is that it shall be unlawful to haul

> any car *used in moving interstate traffic* not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.

This expression may just as well be construed to mean a car which is *habitually* used in such traffic, as one that is being so used at the time the offense is alleged to have been committed; and as this provision of the statute is a remedial one, and was enacted for a well-defined and laudable object, it should be so construed as to best accomplish the result intended.

Speaking of the remedial character of this act, and laying down a principle for its construction, this court in *Johnson* v. *Southern Pacific Company* (196 U. S., 1, 17) said:

> The primary object of the act was to promote the public welfare by securing the safety of employees and travelers, and it was in that respect remedial, while for violations a penalty of $100, recoverable in a civil action, was

> provided for, and in that aspect it was penal. But the design to give relief was more dominant than to inflict punishment, and the act might well be held to fall within the rule applicable to statutes to prevent fraud upon the revenue, and for the collection of customs, that rule not requiring absolute strictness of construction.

This allegation in said counts is also sufficient under the act of March 2, 1903.

The clear intent of the second section of that act was to make all cars used in interstate commerce amenable to the safety appliance laws. It is there declared that the provisions of the former act, and of that act, shall apply to all trains, cars, etc., used on any railroad engaged in interstate commerce; and, as every car which is regularly used in the movements of interstate traffic must be used upon a railroad engaged in interstate commerce, the allegation that the car was so used is sufficient.

That such allegation is sufficient, necessarily, it is insisted, results from the decision of this court in *Johnson* v. *Southern Pacific* (*supra*). It was there insisted that the dining car, which caused the accident, was not engaged in interstate commerce, because it was not actually in transit, but was standing on a siding waiting for the train to come along to which it was to be attached. Upon this question the court said:

> The distinction between merchandise which may become an article of interstate commerce, and an instrument regularly used in moving

> interstate commerce, which has stopped temporarily in making its trip between two points in different States, renders this and like cases inapplicable. Confessedly, this dining car was under the control of Congress while in the act of making its interstate journey, and in our judgment it was equally so when waiting for the train to be made up for the next trip. *It was being regularly used in the movement of interstate traffic and so within the law* (p. 22).

In *Wabash Railroad Co.* v. *United States* (*supra*) Judge Baker based his affirmance of the judgment of the court below upon the ground that the petition alleged that the car was "one regularly used in the movement of interstate traffic;" the question put by him and his answer in the affirmative being as follows:

> Do the words in the second section of the act of 1893, "any car used in moving interstate traffic," mean that a car is subject to the statute only during the time it is actually employed in moving interstate traffic, or that every car is within the act if it is customarily or repeatedly employed in such movements?
>
> No doubt is suggested that the requirement of safety appliances on cars that are actually laden with interstate traffic is a regulation of interstate commerce. Now, if the same interstate carrier may haul on the same interstate highway cars that need not be equipped because, though regularly used in interstate traffic, they are empty at the time (the Wabash case), and also cars that need not be equipped because they are laden with intrastate traffic exclusively (the Elgin case), the purpose of equip-

> ping the cars that are carrying interstate traffic would manifestly be largely impaired or destroyed; for in switching movements, in derailments, and in collisions, disaster would come to the interstate car quite irrespective of the character of the other cars involved. Therefore, Congress, under the power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers" of regulating interstate commerce, had the right to make the laws in question; and they are paramount, of course, to all laws of the States (pp. 3, 5).

In *United States* v. *Great Northern Railway Co.* (145 Fed., 438), the fourth cause of action alleged in the petition was that the defendant hauled on its line of railroad out of Spokane, in the State of Washington, *a car regularly used in the movement of interstate traffic*, without the equipment provided by law, although empty at the time. A demurrer was filed to this and also to other counts. The demurrer was overruled by Judge Whitson, of the eastern district of Washington, upon the authority of *Johnson* v. *Southern Pacific Co.* (*supra*), as well as for independent reasons assigned by him.

In *United States* v. *St. Louis, I. M. & S. R. R. Co.* (154 Fed., 516, 518) Judge McCall of the Western District of Tennessee, in speaking of the meaning of the phrase "used in interstate traffic," said:

> The phrase "used in moving interstate traffic," does not only mean that the car must be actually loaded with interstate traffic and on

> its journey from State to State at the time of the alleged violation, but its more natural meaning is that it is a car that has been used for such purpose, stands ready, and is intended to be used for such purpose whenever needed.

In *United States* v. *Chicago & N. W. Ry. Co.* (157 Fed., 616, 617) Judge Munger, of the District Court of Nebraska, in holding that the safety appliance acts applied to empty cars which were chained together and being carried in a train to repair shops located at a certain point, with reference to the effect of the act of March 2, 1903, said:

> It left no room for a distinction between the hauling of a car actually engaged in interstate commerce and the hauling of a car which is generally used in moving interstate commerce, although not actually so engaged at the time when the offense is charged as being committed.

In *Interstate Commerce Commission* v. *Illinois Central Railroad Co., supra,* it was specifically adjudged that cars which were used in the carriage of interstate commerce were subject to the regulations of the Interstate Commerce Commission, whether at the time they were engaged in such commerce or not; and if such cars can be subjected to the regulations of the Interstate Commerce Commission, whose authority is derived solely from acts of Congress resting upon the commerce clause of the Constitution, it necessarily follows that the Congress can directly regulate the manner in which such cars may be operated.

For the foregoing reasons the judgment of the court below should be affirmed.

J. A. FOWLER,
Assistant Attorney General.

HENRY E. COLTON,
Special Assistant to the Attorney General.

MARCH, 1911.

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SOUTHERN RAILWAY COMPANY *v.* UNITED STATES.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

No. 28. Argued March 9, 10, 1911—Decided October 30, 1911.

The Safety Appliance Act of March 2, 1893, 27 Stat. 531, c. 196, as amended March 2, 1903, 32 Stat. 943, c. 976, embraces all locomotives, cars and similar vehicles used on any railway that is a highway of interstate commerce, and is not confined exclusively to vehicles engaged in such commerce.

The power of Congress under the commerce clause of the Constitution is plenary and competent to protect persons and property moving in interstate commerce from all danger, no matter what the source may be; to that end, Congress may require all vehicles moving on highways of interstate commerce to be so equipped as to avoid danger to persons and property moving in interstate commerce.

As between opposing views in regard to the construction of a statute the court in this case accepts the one in accord with the manifest purpose of Congress.

It is of common knowledge that interstate and intrastate commerce are commingled in transportation over highways of interstate commerce, that trains and cars on the same railroad, whether engaged

in one form of traffic or the other, are interdependent and that absence of safety appliance from any part of a train is a menace not only to that train but to others.

164 Fed. Rep. 347, affirmed.

THE facts, which involve the construction and constitutionality of certain sections of the Safety Appliance Acts, are stated in the opinion.

Mr. Alfred P. Thom, for plaintiff in error, submitted on the record.

Mr. Assistant Attorney General Fowler, with whom *Mr. Henry E. Colton*, Special Assistant to the Attorney General, was on the brief, for the United States.

There is a real and substantial relationship between interstate commerce and the equipping with safety appliances of all cars operated on a line of road engaged in carrying such commerce. *Adair* v. *United States*, 208 U. S. 161, 178.

The fact that the act of March 2, 1893, purports to have been enacted for the purpose of protecting travelers and employés, cannot affect the constitutionality of either that or of any subsequent safety appliance act. *Johnson* v. *Southern Pacific R. R. Co.*, 196 U. S. 1.

The decisions of this court upon analogous questions clearly show that the required relationship exists between interstate commerce, and the things required by the act of March 2, 1903, to be done by those operating railroads engaged in interstate commerce.

Congress has power even to construct roads to be used in interstate commerce, and to grant charters authorizing the construction of highways for that purpose, *e. g.*, the Cumberland National Road; and see *California* v. *Pacific Railroad Co.*, 127 U. S. 1; *Luxton* v. *North River Bridge Co.*, 153 U. S. 525, 529.

This court has never hesitated to declare the power of the United States to remove obstructions of every char-

acter from every avenue of commerce that may directly or indirectly interfere with interstate traffic. *Willson* v. *Blackbird Creek Marsh Co.*, 2 Pet. 214; *Gilman* v. *Philadelphia*, 3 Wall. 713; *Pennsylvania* v. *Wheeling Bridge Co.*, 13 How. 518; *In re Debs*, 158 U. S. 565.

Congress has power to provide, by the method adopted, against conditions which thus interfere with and impede the flow of interstate commerce.

The United States may even prevent interference with a stream not navigable, but which is tributary to a navigable stream, in order to preserve the navigability of the stream to which it is tributary. *United States* v. *Rio Grande Irrigation Co.*, 174 U. S. 690, 699, 709.

In order to facilitate and hasten the transportation of interstate commerce, the several States are not permitted to enact any law or adopt any regulation which will materially interfere with or impede interstate transportation. *Ill. Cent. R. R. Co.* v. *Illinois*, 163 U. S. 142, 153; *Lake Shore Ry. Co.* v. *Ohio*, 173 U. S. 285; *Cleveland &c. Ry. Co.* v. *Illinois*, 177 U. S. 514; *Mississippi R. R. Comm.* v. *Ill. Cent. R. R.*, 203 U. S. 335.

Congress may enact laws regulating the qualifications of those actually engaged in the carrying of interstate commerce, although such persons may at times in the pursuit of their avocation, be solely engaged in handling intrastate commerce. *The Daniel Ball*, 10 Wall. 557; *Smith* v. *Alabama*, 124 U. S. 465, 479; *N. Y., N. H. & H. R. R. Co.* v. *New York*, 165 U. S. 628.

State statutes relating to commerce have been held to be valid where they do not adversely affect but aid interstate commerce or where they have no relationship thereto; but when such statutes have substantially affected interstate or foreign commerce adversely they have been universally held to be invalid. *County of Mobile* v. *Kimball*, 102 U. S. 691, 698; *State Freight Tax*, 15 Wall. 232; *Pullman Co.* v. *Adams*, 189 U. S. 420; *Ratterman* v.

West Un. Tel. Co., 127 U. S. 411; *West. Un. Tel. Co.* v. *Kansas*, 216 U. S. 1.

For other cases bearing materially upon the power of Congress to pass laws remotely affecting interstate commerce, see *United States* v. *Coombs*, 12 Pet. 71, 77; *L. & N. R. R. Co.* v. *Eubank*, 184 U. S. 27; *Employers' Liability Cases*, 207 U. S. 463, 495, 529; *Gibbons* v. *Ogden*, 9 Wheat. 1, 194; *Int. Comm. Com.* v. *Ill. Cent. R. R. Co.*, 215 U. S. 452, 474.

This act has been sustained by the lower Federal courts. *Wabash R. Co.* v. *United States*, 168 Fed. Rep. 1; *United States* v. *Int. & Gt. Nor. R. R. Co.*, 174 Fed. Rep. 638.

If necessary to sustain the constitutionality of the act of March 2, 1903, it might with reason be construed to apply solely to trains, locomotive, tenders, cars, and other vehicles actually engaged in carrying interstate commerce, and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith. *United States* v. *Coombs*, 12 Pet. 71, 76.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

This was a civil action to recover penalties for the violation in specified instances of the Safety Appliance Acts of Congress. 27 Stat. 531, c. 196; 32 Stat. 943, c. 976. The Government prevailed in the District Court and the defendant sued out this direct writ of error.

Briefly stated, the case is this: The defendant, while operating a railroad which was "a part of a through highway" over which traffic was continually being moved from one State to another, hauled over a part of its railroad, during the month of February, 1907, five cars, the couplers upon which were defective and inoperative. Two of the cars were used at the time in moving interstate traffic and the other three in moving intrastate traffic; but it

does not appear that the use of the three was in connection with any car or cars used in interstate commerce. The defendant particularly objected to the assessment of any penalty for the hauling of the three cars, and insisted, first, that such a hauling in intrastate commerce, although upon a railroad over which traffic was continually being moved from one State to another, was not within the prohibition of the Safety Appliance Acts of Congress, and, second, that, if it was, those acts should be pronounced invalid as being in excess of the power of Congress under the commerce clause of the Constitution. But the objection was overruled, 164 Fed. Rep. 347, and error is assigned upon that ruling.

The original act of March 2, 1893, 27 Stat. 531, c. 196, imposed upon every common carrier "engaged in interstate commerce by railroad" the duty of equipping all trains, locomotives and cars, used on its line of railroad in moving interstate traffic, with designated appliances calculated to promote the safety of that traffic and of the employés engaged in its movement; and the second section of that act made it unlawful for "any such common carrier" to haul or permit to be hauled or used on its line of railroad any car, "used in moving interstate traffic," not equipped with automatic couplers capable of being coupled and uncoupled without the necessity of a man going between the ends of the cars. The act of March 2, 1903, 32 Stat. 943, c. 976, amended the earlier one and enlarged its scope by declaring, *inter alia*, that its provisions and requirements should "apply to all trains, locomotives, tenders, cars, and similar vehicles used *on any railroad engaged* in interstate commerce, and in the Territories and the District of Columbia, and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith." Both acts contained some minor exceptions, but they have no bearing here.

The real controversy is over the true significance of

the words "on any railroad engaged" in the first clause of the amendatory provision. But for them the true test of the application of that clause to a locomotive, car or similar vehicle would be, as it was under the original act, the use of the vehicle in moving interstate traffic. On the other hand, when they are given their natural signification, as presumptively they should be, the scope of the clause is such that the true test of its application is the use of the vehicle on a railroad which is a highway of interstate commerce, and not its use in moving interstate traffic. And so certain is this that we think there would be no contention to the contrary were it not for the presence in the amendatory provision of the third clause "and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith." In this there is a suggestion that what precedes does not cover the entire field, but at most it is only a suggestion and gives no warrant for disregarding the plain words "on any railroad engaged" in the first clause. True, if they were rejected, the two clauses, in the instance of a train composed of many cars, some moving interstate traffic and others moving intrastate traffic, would by their concurrent operation bring the entire train within the statute. But it is not necessary to reject them to accomplish this result, for the first clause, with those words in it, does even more, that is to say, it embraces every train on a railroad which is a highway of interstate commerce without regard to the class of traffic which the cars are moving. The two clauses are in no wise antagonistic, but, at most only redundant, and we perceive no reason for believing that Congress intended that less than full effect should be given to the more comprehensive one, but, on the contrary, good reason for believing otherwise. As between the two opposing views, one rejecting the words "on any railroad engaged" in the first clause and the other treating the third clause as redundant, the latter is to be preferred, first, because it is

in accord with the manifest purpose, shown throughout the amendatory act, to enlarge the scope of the earlier one and to make it more effective, and, second, because the words which it would be necessary to reject to give effect to the other view were not originally in the amendatory act, but were inserted in it by way of amendment while it was in process of adoption (Cong. Rec., 57th Cong., 1st Sess., vol. 35, pt. 7, p. 7300; *Id.*, 2d sess., vol. 36, pt. 3, p. 2268), thus making it certain that without them the act would not express the will of Congress.

For these reasons it must be held that the original act as enlarged by the amendatory one is intended to embrace all locomotives, cars and similar vehicles used on any railroad which is a highway of interstate commerce.

We come then to the question whether these acts are within the power of Congress under the commerce clause of the Constitution, considering that they are not confined to vehicles used in moving interstate traffic, but embrace vehicles used in moving intrastate traffic. The answer to this question depends upon another, which is, Is there a real or substantial relation or connection between what is required by these acts in respect of vehicles used in moving intrastate traffic and the object which the acts obviously are designed to attain, namely, the safety of interstate commerce and of those who are employed in its movement? Or, stating it in another way. Is there such a close or direct relation or connection between the two classes of traffic, when moving over the same railroad, as to make it certain that the safety of the interstate traffic and of those who are employed in its movement will be promoted in a real or substantial sense by applying the requirements of these acts to vehicles used in moving the traffic which is intrastate as well as to those used in moving that which is interstate? If the answer to this question, as doubly stated, be in the affirmative, then the principal question must be answered in the same way. And this is

so, not because Congress possesses any power to regulate intrastate commerce as such, but because its power to regulate interstate commerce is plenary and competently may be exerted to secure the safety of the persons and property transported therein and of those who are employed in such transportation, no matter what may be the source of the dangers which threaten it. That is to say, it is no objection to such an exertion of this power that the dangers intended to be avoided arise, in whole or in part, out of matters connected with intrastate commerce.

Speaking only of railroads which are highways of both interstate and intrastate commerce, these things are of common knowledge: Both classes of traffic are at times carried in the same car and when this is not the case the cars in which they are carried are frequently commingled in the same train and in the switching and other movements at terminals. Cars are seldom set apart for exclusive use in moving either class of traffic, but generally are used interchangeably in moving both; and the situation is much the same with trainmen, switchmen and like employés, for they usually, if not necessarily, have to do with both classes of traffic. Besides, the several trains on the same railroad are not independent in point of movement and safety, but are interdependent, for whatever brings delay or disaster to one, or results in disabling one of its operatives, is calculated to impede the progress and imperil the safety of other trains. And so the absence of appropriate safety appliances from any part of any train is a menace not only to that train but to others.

These practical considerations make it plain, as we think, that the questions before stated must be answered in the affirmative.

Affirmed.